



Great Supreme Court Decisions

MARBURY — v. — MADISON

Establishing Supreme Court Power



Shane Mountjoy

Consulting Editor: Tim McNeese

Great Supreme Court Decisions

MARBURY — v. — MADISON

Establishing Supreme Court Power



GREAT SUPREME COURT DECISIONS

Brown v. Board of Education

Dred Scott v. Sandford

Engel v. Vitale

Marbury v. Madison

Miranda v. Arizona

Plessy v. Ferguson

Regents of the University of California v. Bakke

Roe v. Wade





Great Supreme Court Decisions

MARBURY — V. — MADISON

Establishing Supreme Court Power

Shane Mountjoy, Ph.D.

Marbury v. Madison

Copyright © 2007 by Infobase Publishing

All rights reserved. No part of this book may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage or retrieval systems, without permission in writing from the publisher. For information contact:

Chelsea House
An imprint of Infobase Publishing
132 West 31st Street
New York, NY 10001

Library of Congress Cataloging-in-Publication Data

Mountjoy, Shane, 1967-

Marbury v. Madison : establishing supreme court power/ Shane Mountjoy.
p. cm. —(Great Supreme Court decisions)

Includes bibliographical references and index.

ISBN 0-7910-9240-2 (hardcover)

1. Judicial review—United States—History—Popular works. 2. Separation of powers—United States—History—Popular works. 3. Marbury, William, 1761 or 2-1835—Trials, litigation, etc.—Popular works. 4. Madison, James, 1751-1836—Trials, litigation, etc.—Popular works. 5. United States. Supreme Court—History—Popular works. I. Title. II. Series.

KF4575.Z9M69 2006

347.73'12—dc22

2006007327

Chelsea House books are available at special discounts when purchased in bulk quantities for businesses, associations, institutions, or sales promotions. Please call our Special Sales Department in New York at (212) 967-8800 or (800) 322-8755.

You can find Chelsea House on the World Wide Web at
<http://www.chelseahouse.com>

Series design by Erika K. Arroyo
Cover design by Takeshi Takahashi

Printed in the United States of America

Bang EJB 10 9 8 7 6 5 4 3 2 1

This book is printed on acid-free paper.

All links and Web addresses were checked and verified to be correct at the time of publication. Because of the dynamic nature of the Web, some addresses and links may have changed since publication and may no longer be valid.



Contents

1	The Decision of This Court Is . . .	7
2	The Politics of <i>Marbury v. Madison</i>	15
3	Chief Justice John Marshall	29
4	Adams and Marbury	47
5	Jefferson and Madison	57
6	The Marshall Court in 1803	71
7	The Federal Court System, 1789–1803	86
8	The Trial of <i>Marbury v. Madison</i>	98
9	The Decision	107
10	Judicial Review Since <i>Marbury</i>	116
	Chronology and Timeline	126
	Notes	129
	Glossary	132
	Bibliography	133
	Further Reading	135
	Index	137

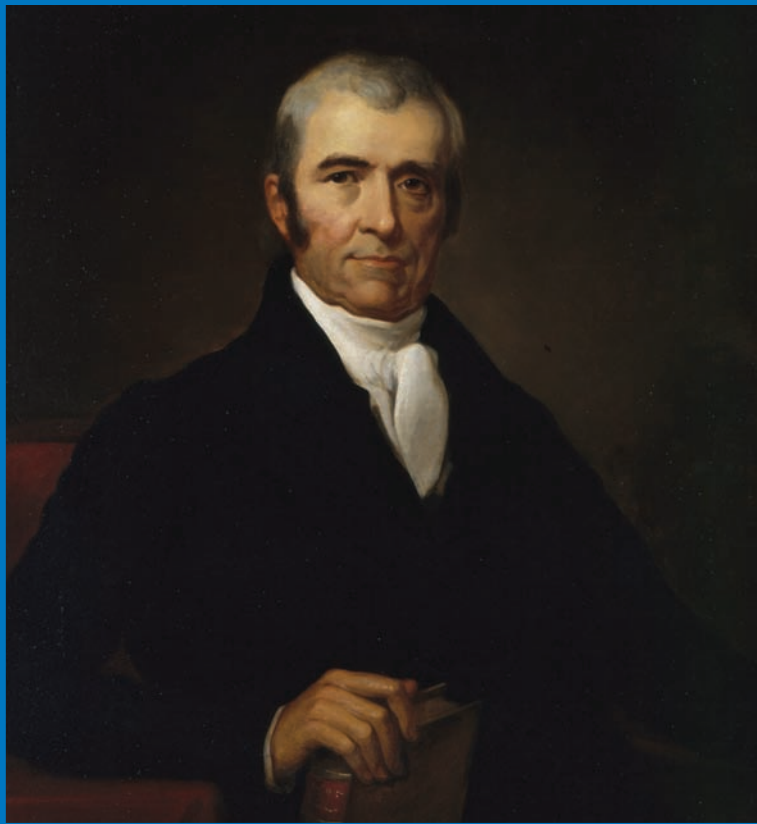


1

The Decision of This Court Is . . .

The courtroom was quiet as the man sitting in the center of the law bench called the proceedings to order. Then, the chief justice slowly and deliberately read the decision, and the few people in attendance listened quietly. The opinion meticulously laid out the issues facing the Court in the case.

It was February 24, 1803. Many in Washington, DC, did not realize it, but the Supreme Court was handing down a decision that would alter the balance of power among the three branches of government. This case was known as *Marbury v. Madison*. The people involved in the case were high government officials, and some of them helped found the United States of America. The facts of the case seemed harmless enough—an employee



John Marshall (1755-1835) headed the Supreme Court longer than any other Chief Justice in U.S. history and had a lasting influence on the U.S. legal system.

believed that his rights had been violated by his employer. It just so happened that the employer in this case was the federal government, represented by Secretary of State James Madison.

Chief Justice John Marshall read the unanimous decision. He explained that Marbury had a legal right to the position to which he had been appointed by the previous president of the United States, John Adams. Next, Marshall gave reasons why the Supreme Court could not and would not issue a court order to force Madison to deliver the commission that would complete

Marbury's appointment as a justice of the peace. The verdict startled those who supported and those who opposed the attempt by Jefferson and Madison to derail Marbury's appointment. The decision was unexpected, and it offered both sides a partial victory. Although both sides saw some of what they hoped for, each was also a little disturbed at the lack of decisiveness. The decision exposed many of the issues that faced Marshall and his colleagues on the Court.

One of the issues had nothing to do with the individuals or facts of the case. Instead, it had everything to do with the Court's lack of stature within the federal government. The Supreme Court in 1803 was anything but important. As if to show how unimportant the court was, the young American government failed to provide the Court a building of its own in the new capital city. The Supreme Court justices were lent a committee room in the Capitol building in Washington, DC. The room was located on the first floor and no doubt added visual evidence of the relative insignificance of the court. The room was 30 feet by 35 feet and had a ceiling 18 feet high.¹ It featured two large windows on its west wall. At least one fireplace, situated on the hallway wall, provided the necessary heat for the court. In 1935, the Court left the Capitol building for more suitable accommodations. The room within the Capitol has since been remodeled, so historians are not sure exactly how the room was decorated or even where the justices' bench was located.

The courtroom even lacked finishing touches. While the court met in this small room, the room was "but half finished."² In this small, minor room, so near the busy hallways and Senate chambers of the national government, the Supreme Court met from 1801 until 1808.

The Supreme Court first convened in Washington, DC, on February 2, 1801. Only one justice, William Cushing, was there. The Court lacked a quorum, or minimum number of members to conduct business. Without enough justices to call the proceedings to order, the Court was adjourned for two days. When



This print made from an early engraving shows the U.S. Capitol grounds around the year 1800. At that time, Washington, D.C., was not the developed city it is today.

the Court reassembled on February 4, three more members of the six-member Court were present: Justices Samuel Chase and Bushrod Washington and Chief Justice John Marshall. Because Marshall had not yet met with the Court, his commission was read and he took the oath of office before taking his seat on the bench with the other justices.³

The Marshall Court was destined to make its mark on the American judicial system. What would be seen by many as an important and influential Court began its first term in February 1801 with little to show for its effort. Aside from Marshall being sworn in as chief justice, the Court was hardly noticed. Newspapers did not even regularly cover Supreme Court proceedings at the time. This lack of attention reflected the political realities of the day. The Court did lack stature, as even Marshall recognized, and because the political climate threatened the independence

of the Judicial Branch, Marshall took care to avoid a direct confrontation with the Executive and Legislative branches in the *Marbury* case. In this decision, however, the Court also asserted the power of judicial review for the first time.

Judicial review is the power of the Supreme Court to examine the actions of another branch of government. Such power means that the Supreme Court can look at acts of legislation passed by the U.S. House and Senate or actions of the president or the Executive Branch and determine whether or not it is constitutional. If the Court decides that an act of Congress or an executive action is unconstitutional, the law or action is unacceptable. In legal terms, if something is unconstitutional, it is “null and void,” meaning that it is invalid or not binding.

The power of judicial review provides many benefits to the American public. Perhaps the greatest advantage to this power is the protection it offers to U.S. citizens. Judicial review allows the Court to prevent government from interfering in areas it should not. It also allows the Court to prevent the government from taking action in ways or places where it does not have constitutional authority.

In the early years of the new American government, the power of judicial review for the federal Supreme Court was not established. Some Americans did not think that the Court had or should have the power of judicial review. Instead, many believed that the state courts should retain the power of judicial review, thereby limiting federal powers. What seemed to be an insignificant court case, *Marbury v. Madison*, shifted the balance of power away from the state court systems to the federal bench.

The U.S. Constitution was written in 1787. Under the British system, Parliament had overriding supremacy—the final say in constitutional matters—over the courts and the king. The 13 British colonies in America gave their courts the power of judicial review, however, a change from the way the British approached constitutional law. These judicial powers continued to be exercised by the state courts after the break with England.

We the People

the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do hereby constitute this Federal Government.

Article. 1

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article 1. The House of Representatives shall be composed of Members chosen in each several Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Power shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a Citizen of the United States, and shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[illegible]

*There was no happen in the Revolution from any religious conviction & hardly worth while for those who were not Protestants.
The House of Representatives did show some spirit and color given, and would have been the power of England's sword.*

William S. McKeane of the Standard Shells Club is composed of twelve members, seven each state, chosen by the Legislature, three for one year, and a fourth shall have one vote.

[illegible]

We Pardon shall be withheld, if it shall not have attained to the degree of thirty years, and even were it as a consequence of an accident.
 A person shall be an inhabitant of that place, for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, and shall have no vote, unless he be a Senator, and shall exercise the powers of the President in case of his death or disability. He shall also exercise the powers of the President in case of his death or disability.

There's no doubt that we have the right to say to the Congress, "We are willing to let the Congress decide whether or not we want to have a new law, and we are willing to let the Congress decide whether or not we want to have a new law." And we are willing to let the Congress decide whether or not we want to have a new law.

[illegible]

ration. 4. The House Rules and manner of holding Elections for Senators and Representatives, and of providing in each state for the election of the Governor, and of any time by law made or other such Regulations, except as to the Rules of changing Senators.

The crops shall be stored at least once in every year, and each Marketing shall be on the first Monday in December, and is the product of each a different Day.

Article 5. Each House shall be authorized to elect its officers and representatives of its own House and a majority of each House shall be authorized to elect its members. The House may authorize from day to day and may be authorized to accept the attendance of its members. The House may authorize its members to be authorized to accept the attendance of its members.

Cash House may determine the Rules of its Proceedings according to its own will as far as respects the internal part, with the concurrence of the Standing Committee.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, containing such Parts as may in their Judgment be proper; and the Times and Days of the Meetings of the Members of either House on any question shall, at the Desire of one fifth of either House, be entered on the Journal.

Neither storm, during the progress of Campaign, shall produce the element of weather, of more, for more than three days, nor in any other than that in which the sea remains still and calm.

[illegible]

Page 1 of 1

The U.S. Constitution was signed on September 17, 1787

The U.S. Constitution was signed on September 17, 1787, after the Continental Congress spent months framing a new

after the Continental Congress spent months framing a new government. The work done by the men that summer still

government. The work done by the men that summer still

stands today.

Downloaded from <http://ajph.org/> on November 10, 2014

Early American leaders realized the value of an independent and powerful judicial branch when they crafted the Constitution. While the states considered adopting the Constitution, Alexander Hamilton wrote in *The Federalist No. 78* that “the complete independence of the courts of justice is particularly essential. . . .”⁴ This judicial independence is important because it means that the courts do not need to worry about pleasing the president or Congress. Instead, the judiciary is obligated to interpret the law in light of the Constitution. This independence helps to ensure that the other two branches of government act in ways that are constitutionally acceptable.

State and lower federal courts also rule on constitutional matters, but the principle of judicial review means that the Supreme Court has the final say. One of the Court’s primary purposes is to ensure that decisions are consistent. Decisions made by lower courts must interpret the laws in ways similar to what the Supreme Court says. Otherwise, the Supreme Court will simply overrule the lower courts’ decisions. The Supreme Court cannot hear every case, so the principles it lays out in its decisions help establish precedents to guide the lower courts as they decide cases.

More important, because the Supreme Court has the power of judicial review, it is equal to the Legislative and Executive branches. The other branches cannot simply ignore the Court. Congress can pass whatever laws it chooses, but the Court will ultimately decide whether those laws will stand up as constitutional. The Executive Branch must often weigh its actions because the Court might declare them unconstitutional. The role of the Supreme Court and its equal status with the Executive and Legislative branches means that the Judicial Branch must be considered by the other two branches before they pass laws or take actions.

Judicial review is the accepted way of interpreting law in the United States today. Sometimes the Executive and Legislative branches disagree with Supreme Court decisions and often

many Americans do not agree with a specific decision by the Court—but most accept the idea that the Court has the power of judicial review.

Some disagree with the Court's power of judicial review because justices do not stand for election to their position. "Some critics of judicial review argue that it is basically undemocratic to give appointed officials not directly responsible to the electorate the power to void the actions of duly elected representatives."⁵

The influence of American judicial review extends beyond our own country: Other countries have since followed America's example. Today, most constitutional governments have some form of judicial review. Sometimes it is their version of the Supreme Court. In other cases it is a special court, board, or council that has the responsibility to determine the constitutionality of legislative and executive actions.



The Politics of *Marbury* *v. Madison* 2

Marbury v. Madison is perhaps the most important court case in U.S. history. The significance of the case cannot be understood fully without examining the political climate in which the decision was made. That story has its roots in events that took place more than 15 years earlier, during the founding of the new government.

The 13 colonies grew tired of British control, especially as the distant government attempted to impose taxes on the American colonists. To protest and to protect their rights, the colonies formed the Continental Congress to act in unison. Tensions escalated until shots were fired at the battles of Lexington and



George Washington holds the Declaration of Independence in this eighteenth century colored engraving.

Concord in April 1775. The colonists attempted to resolve their differences with the mother country, but all efforts fell short. Finally, on July 4, 1776, Congress issued the Declaration of Independence. The 13 British colonies were now the 13 United States of America. After having declared its independence, this fledgling nation had to win it in battle. The Revolutionary War ended with the signing of a peace treaty in 1783. The United States was now an independent and sovereign nation.

In the 1780s, the United States were hardly united. Instead, the states were virtually independent of each other and often worked against each other for their own benefit. Each state belonged to the Confederation, which was established with the 1781 ratification of the first American constitution, the Articles of Confederation. Under the Articles, power lay at the state level and the national government was greatly restricted. These restrictions made it almost impossible for the national government to provide an adequate defense for the new country. Such a weak government was vulnerable, and many of the leading citizens began to call for changes to the system.

In 1787, 55 men from every state but Rhode Island came together in Philadelphia seeking to deal with the weaknesses of the Articles of Confederation. These men worked for a period of about four months to lay the foundation for a new American government. This group included noted leaders and revolutionaries such as George Washington, Benjamin Franklin, Alexander



This color print depicts George Washington, Benjamin Franklin, and others signing the U.S. Constitution in Philadelphia.



John Adams, Gouverneur Morris, Alexander Hamilton, and Thomas Jefferson, leaders of the Continental Congress, helped frame the U.S. Government that still stands today.

Hamilton, and James Madison. Their efforts produced a new American constitution—a constitution that provided for a much stronger government than the Articles of Confederation had.

In September 1787, once the convention was over, the fight to adopt the new constitution began. The Constitution would become valid only if nine states ratified, or voted, to accept the new system of government. The Philadelphia Convention sent the Constitution to the Confederation Congress, which then sent it to the states for ratification. It did so with no recommendation—that is, the Congress neither endorsed nor condemned the document. The decision to ratify the new government was truly in the hands of the states.

The ratification fight featured two sides: Federalists, or those who supported the Constitution, and Anti-federalists, or those

who opposed the Constitution. The Federalists recommended adoption, arguing that the Articles government, which left most power in the hands of state governments, left the national government too weak to protect individual liberty and independence. The Anti-federalists claimed that the new national government put too much power in the hands of the central government, which would inevitably lead to restricted liberty.

The Federalists were well financed and organized. They offered a clear direction for the country: Adopt this new Constitution and allow our government to protect our liberty and independence. Many notable Americans supported the new Constitution, including those who attended the convention. It is important to note that, although these men supported the new government, they did not always agree on political issues. Some of them were destined to become bitter political enemies.

The Anti-federalists were led by men such as Patrick Henry, John Hancock, Samuel Adams, and James Monroe. Because each state had to ratify the Constitution, the Anti-federalists focused their efforts at the state level. The Anti-federalists argued that the new Constitution lacked a bill of rights, thus failing to preserve individual rights and liberties under the new government.

The Federalists countered this argument with a series of essays known as *The Federalist Papers*. This collection included 85 newspaper essays written by Alexander Hamilton, James Madison, and John Jay. Each of the authors who contributed to *The Federalist Papers* was a well-known public figure, and each later served the United States in a prominent position. Alexander Hamilton served as the first secretary of the treasury. His ideas set the course for economic policy for the new nation. James Madison, the Father of the Constitution, served two terms each as secretary of state and president of the United States. John Jay became the first chief justice of the U.S. Supreme Court. Jay also served in various roles as a negotiator and state representative for the United States.

New-York, Nov. 22.

[illegible]

A third and last paper of the eighth Congress "It is not impossible, after all these misadventures of the humiliating peace, that the States of Holland, West Frisia, and Utrecht, will oblige the King of Prussia to present to them a bill of rights, and a declaration in violation of the Stadtholder's rights, and to restore the ancient Constitution of the Republic, now broken and divided by the many parties and members of the three-maintained States. We do not yet have much probability of the success of their new petition to the States; and it is even expected by the political intelligences on the part of the States, that the Council of the Court of France is charged on this head, and that they are to try every means to prevent the success of this petition, especially by the use of bribery."

It is upon the basis of the second point, viz. to decide what kind of sacrifices France will offer, or prefer, against that which is impossible, viz. a dissolution of the attempt to fix the interests of Orange, and the punishment of those who feel under no wrong. This the latter is your duty to, your violating this duty to your supporters and to society at large, and to the Government of the world, and they cannot find it in their consciences to do so. It is, that the Prince has long been the agent of their desires. It is more than four years since they openly accused him of intruding publicly against the Treaty, and, when the Prince demands Satisfaction for this, a *Laure*, they refused to give the Prince of such duty.

[illegible][illegible]

line conduct, inspired by that natural love of life which is implanted in our nature, he took the resolution of getting out of the way of the physicians, and devoting itself to the work, chiefly to put the subject of derangement, which then passed for the water-cure, where certain death awaited him; and his illness was very great, as he feared to know the least word of swimming, that led to deep sounds, spoke woe; for tho' the sea, which was then overboard, was not so deep as you think, I found not to know how to get out of it.

In the Liverpool papers, the *Times*, *Illustrator*, and the *Steeley and Abney*, were advertised for New-York!

The Hall, Wash. for Philadelphia!

The Irish Volunteers, Cooke, for Baltimore;
The Penn and Plinty, Williams, for Dublin;
The Hendryson, Stroh, and the Abby, Bradshaw, for James River;
The Albat, Tulliver; Ciss, Dawson; Jane, Watson; and Arline, Sutherland; for Charleston.
They were all to sail early in October.

Estreito de Vago a sermo. riuoal per

LONDON.
Sept. 15. Mr. Goreau is returned to the Continent, with full powers for negotiating the agreement now on the table between Mr. Mayfield and the President of Oregon.
An anonymous correspondent writes, he has employed a horse thief, Mallard, dated August 24, which states, that by account from Rotterdam it appears, that the Prince of Wales had assumed a second new channel trait Venetia, which the Emperor had declared mortal; and that your al-

One of the principal articles of the late Convention between France and England is, "That no *disputes of war*, of any description, on either side, shall fall for the sanction, without mutual consent." This article is well, in all probability, before the best producers of *armistice* wars, as it has been the policy of London, for near half a century, to *discontinue Armistice*, previous to a rupture, in her extra European transactions. The date for the War-Indians is the year of 1744, in America in the war of 1756, and in the 18th-Indians in the late war, and because the declared in favor of America.

[illegible]

THE FEDERALIST, No. X.

[illegible]

only able to view him cold and expeditious. Compulsions are very seldom born from true misanthropy and virtuous sincerity, especially the friends of public and private reform, and the public mind is not so easily deceived. The one who is really sincere and virtuous, and whose public good is distinguished in the conflicts of rival parties and their masters are not often deceived, nor according to the rules of inference, and the rights of the minor party are not sacrificed to the interests of the majority and even-better-managed majority. Moreover, to admit we may wish that their compulsion had no foundation, the evil men of known fact will not permit us to deny that they are right in their own eyes, and that they are right, in the eyes of the people of the United States, that those of the different union which we labor have been seriously changed on the

pression of our government; but it will be kind, at the same time, that other cities will, yet, still claim homage for many of our great men, and for the great principles that this prevailing and burning desire of public engagements, and claim for private life, has been the cause of.

On contrary to the other. They must be chiefly, if not wholly, of the unbusinesslike and ignominious, which a fashion of the day has made the fashion of the age.

By a talent, understood a number of criticism, which amounting to a society or ministry of the talents, who are united in a common interest, and who are not of liberal, who are to the rights of other citizens, or to the persons and agencies of the country.

There are two methods of curing the chief evils of fashion: the one, by removing its causes; the other, by changing its effects. The first method is the most direct, and the cause of fashion, the one by destroying the luxury which is the main cause of it; the other, by giving it more credit, the first method is the most direct, and the second method is the most indirect.

It could never be more truly said than of the book remedy, than of its wife that the definite. Library is to fallow, whereas to be, as almost without which is infinitely express. But it is evident to a fully in absolute library, which is essential to political life, because it is sufficient fallow, than it would be to with the assimilation of air, which is essential to animal life, because it is important to feel in depressive agency.

[illegible]

the way we can tell we're there every-
where through intelligent selection of
places to visit, and the way we can
find out what's going on in the
regions of civil society. A small but
effective group of people, the
European Council of Ministers,
the Government, and many other ad-
ministrative agencies, such as the
Ministry of Health, are working
together for surveillance and power, so as to
take the best possible advantage of
what has been learned in the human
pandemic. It's not that we're all
happy, but it's not that we're all
sad either. We're all working hard
to get things done. We're all
trying to do the best we can. We're
all trying to do the best we can.

No man is allowed to be a judge in his own case; because his interest would certainly bias his judgment, and not impartially discuss his feelings. With the same view, a greater measure, a body of men, are preferred to a single man, and, at the same time, yet, what are many of the most important acts of legislation, that in every political determination, are formed concerning the rights of large portions, but concerning the rights of large bodies of men; and what are the different and conflicting interests, which are parties to the action, which the determination is a law proposed concerning private interests in a nation or in which the territory are parties on one side, and the claims on the other. Justice might be held the balance between them. Yet the parties are not equal, and the balance is not equal, and the most numerous party, or the one which has the most powerful friends, will be victorious, and not private justice will be executed. No person shall dominate in society.

It is in vain to say that selfishness

persons will be able to adjust their clothing instantly, and render them all subservient to the public good. Enlightened Rascals will not always be at the helm. I fear, in many cases, no such an adjustment be made at all, without taking into view the sacred and sunny possessions, which will surely prevail over the immediate benefit which one party may find in disregarding the rights of another, or the good of the

The inference to which we are brought, is, that the *crisis of fashion* cannot be removed; and that relief is only to be sought in the means of controlling its effects.

If a fashion exists which the majority prefer, is supplied by the republican principle, which enables the majority to dissent from their views by, singular, were it saying the administration, is may condemn the

... and it will be unable to preserve and make its values under the form of the Constitution. When a majority is installed in a nation, the form of popular government is the only thing that stands in the way of its rule. It is not the people, but the public good, and the rights of the minority, that must be protected. To protect the public good, and private rights, against the danger of such a nation, and at the same time, to preserve the spirit and the form of popular government, is then the great object to which our energies are directed. Let us add that it is in the great deliberation, by which alone this form of government can be retained in the opposition under which it has long labored, and be introduced into the others.

Why must man be in this vicious strait? Why is he by one of two evils? Under the influence of the Law of God in Israel, is a majority at the same time, made preponderant to the majority, having both conciliatory and pulling or coercive, must be rendered by their number and local situation, unable to resist and carry into effect schemes of oppression. If the impulse and the opportunity are fully to question, we will know that further moral and religious motives can be of no avail as adequate controls. They are not, and the only adequate controls are the social values of individuals, and the character of the majority in proportion to the number constituting it; that is, as proportion to their efficacy becomes nullified.

[illegible]

A Republic, by which I mean a Government in which the Liberty of representation takes place, upon a different principle, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure Democracy, and we shall comprehend both the nature of the cure, and the efficacy which it must derive from the Union.

The two great points of difference between a Democracy and a Republic are, first, the delegation of the Government, in the latter, to a small number of citizens selected by the elect. Secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

1

100

100

1

1

100

100

100

hear
from
State
was
ation
and
judg

The Federalist Papers, shown above, were essays written by Alexander Hamilton, James Madison, and John Jay that were published in newspapers with the goal of gaining support to ratify the Constitution.

insured
at Bon
fruit of
can
is me
This
said

The arguments contained within these essays became the basis for the Federalists' debate points during the state ratification fights. *The Federalist Papers* were published under the pen name of Publius, a reference to a key citizen who helped establish the Roman Republic. This Roman was named Publius Valerius Publicola; his surname meant "friend of the people."

The purpose of *The Federalist Papers* was to win support for the proposed constitution. Some scholars view these writings as the most important public relations campaign in history. The intent of the essays was clearly to boost public support by writing opinions supportive of the new constitution. The use and role of *The Federalist Papers* in shaping American public opinion serves as a principal illustration of how to successfully affect the outcome of a campaign.

In the end, the Anti-federalists won the argument for a bill of rights. Without such guarantees, ratification seemed unlikely. Facing this political reality, the Federalists altered their approach. They acknowledged the need for a bill of rights and set about amending the Constitution even during the ratification fight. By the end of 1788, 12 of the original 13 states had ratified the new Constitution. Shortly thereafter, the first presidential election resulted in the victory of George Washington. The new government was now ready to begin its work.

In 1789, George Washington was sworn in as the first U.S. president. The hero of the Revolutionary War continued to serve in ways that led others to call him the Father of Our Country. President Washington appointed several prominent citizens to run the Executive Branch departments. This group is called the "cabinet." Among these leading men were Alexander Hamilton and Thomas Jefferson. Hamilton served as secretary of the treasury and Jefferson as secretary of state. The men differed in two distinct ways. Hamilton supported a strong national government that exercised its power, and he believed that the British form of government was ideal. Many of his policy stands, especially in foreign affairs, were pro-British and designed to strengthen the

ties between the two countries. In contrast, Jefferson favored a self-restrained government that rarely exercised its power, and he greatly admired the French people. He had served as the American minister to France and maintained close friendships there. Hamilton and Jefferson rarely agreed on policy issues, yet each was loyal to Washington and did his best to get along with the other. The political rift between them eventually led to the formation of the first political parties. Later events, especially those that affected American relations with France, served to drive a deeper wedge between Hamilton and Jefferson.

Hamilton's approach to political power emphasized the power of the federal government. He and his supporters eventually called themselves the Federalist Party. Although the Federalists believed in the new Constitution, the name "Federalist" is used for both the party and for those who initially supported ratification. After ratification, the term "Federalist" came to represent those who supported Hamilton's view of government.

Jefferson believed in the power of the people to govern themselves. He did not think that government should be too strong; otherwise the rights and liberties of the people might be sacrificed to the power of the government. Jefferson and his supporters believed in a republican form of government. In a republic, individuals represent the people by holding positions in government. In a democratic republic, representatives are democratically elected to serve in government. Because of their faith in the people's wisdom to elect qualified and morally sound people, Jefferson and his followers called themselves Republicans.

Jefferson was convinced that Hamilton and many of his supporters believed in having a government so strong that it threatened individual liberty. Hamilton and his supporters believed that Republican ideology would lead to chaos and anarchy. During the Washington administration, Jefferson increasingly lost his influence as the president relied more heavily on Hamilton's nationalistic reasoning and advice. Hamilton's

influence and voice became more and more dominant, and the Washington administration began to exercise more federal power. Recognizing the shift away from a more restrained government, Jefferson believed that he had become ineffective and resigned as secretary of state in late 1793. He retired home to Virginia, hoping to live out a quiet retirement.

Jefferson's friends and supporters insisted that he serve his country, however. In 1796, Jefferson reluctantly allowed his name to be put forward as candidate for president. The election was close, but in the end it was the Federalist candidate and Washington's vice president, John Adams, who won. Due to a quirk in the Constitution that did not require members of the Electoral College to distinguish their votes between the president and vice president, Jefferson ended up being elected vice president, even though he belonged to a different party than Adams. Jefferson and Adams had very different political beliefs, and the situation strained their relationship. Eventually, they came to see each other as enemies.

The rift between Jefferson and Adams occurred over time. Their political differences included an incident in which the future chief justice, John Marshall, played a large role. The incident was a diplomatic scandal called the XYZ Affair, in which French government officials demanded a large bribe from the American delegation to arrange a meeting between the two governments. Jefferson believed that the Adams administration intentionally made the French government look bad. His love for the French people somewhat blinded him to the insult from the French government. Jefferson could see only a pro-British administration finding an opportunity to embarrass France, which shared many of Jefferson's republican ideals. Marshall was one of the American envoys to France, and the incident won him instant popularity in Federalist circles.

In 1798, the Federalists, who controlled Congress, passed a series of laws called the Alien and Sedition Acts. These acts made it more difficult for recent immigrants to vote and allowed

the government to impose fines or even imprisonment on individuals who criticized, in writing or speech, Congress or the president. At first glance, these laws appeared to limit the activities of those who might undermine American efforts during time of war: non-Americans (recent immigrants) and those critical of the government. Many saw the laws as a thinly veiled attempt to attack the Republican Party. Because many recent arrivals to the United States supported the Republicans, the Alien Acts undercut Republican voting power. Regarding the Sedition Act, the Republicans disagreed



ADAMS AND JEFFERSON: FROM FRIENDS TO ENEMIES AND ENEMIES TO FRIENDS

Events surrounding the election of 1800 led to *Marbury v. Madison*. The two presidential candidates, John Adams and Thomas Jefferson, had known each other for years. They met when both served in the Continental Congress beginning in 1775. In fact, when Jefferson wrote the Declaration of Independence, Adams and Benjamin Franklin served with him on the committee.

Later, the two served in Europe as diplomats, with Jefferson in Paris and Adams in London. When Jefferson visited England, he and Adams vacationed together, visiting the home of William Shakespeare.

In addition to their work on the Declaration of Independence, the two men had many things in common. Neither attended the Constitutional Convention in Philadelphia in 1787. Both served as vice president of the United States, and both men were elected president.

They also had some strong differences of opinion concerning the role of government. After the election of 1800, the friends

with Adams and some of his policies. Thus, if they dared to speak or write about their concerns, they stood a great chance of being criminalized for their political beliefs. Worse still, each of the acts was set to expire after the next presidential election, thereby protecting the Federalists until after the elections. Such heavy-handed tactics hurt the Federalists in the election of 1800.

The campaign for the presidency in 1800 was perhaps the most contentious and divisive campaign in American history. The Republican candidate was the sitting vice president, Thom-

became bitter political enemies. Their friendship was apparently over. Jefferson served two terms as president and then retired to Monticello, his home in Virginia. Years passed, but the arrival of a letter to Jefferson in 1811 changed their strained relationship. The letter was from Adams, who wanted to reestablish their ties. The men renewed their friendship through an ongoing exchange of letters. Despite their political differences, they still respected one another. As time passed, the two aging men missed each other.

Their friendship restored and their political differences put aside, Adams and Jefferson faced the latter years of their life. When Adams lay dying, his last words were said to be "Jefferson still survives."^{*} Jefferson had died just a few hours earlier, however. It was July 4, 1826—exactly 50 years after the ratification of the Declaration of Independence!

^{*}<http://www.monticello.org/jefferson/dayinlife/cabinet/profile.html>.

FIFTH CONGRESS OF THE UNITED STATES:

At the Second Session,

Begun and held at the city of *Philadelphia*, in the slate of PENNSYLVANIA, on
Monday, the thirteenth of *November*, one thoufand feven hundred
and ninety-feven.

An ACT concerning aliens.

BE it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, *That it shall*

It is resolved of the United States at any time during the continuance of this act, to order all such orders as he shall judge dangerous to the peace and stability of the United States, shall have execution, provided to suggest are concerned in any treasonable or seditious combinations against the government thereof, to the entry of the United States, within such time as shall be expressed in such order, which order shall be served on such alien by delivering him a copy of the same at his usual abode, and returned to the office of the Secretary of State, by the discharge of other process to which the same shall be subject, every alien so ordered to depart, shall so depart at once within the United States after the time limited in such order for his departure, unless obtained a license from the President to reside therein, or having obtained such license shall not have confessed therein any such act or omission thereof, be authorized for a license not exceeding three years and shall never after be admitted to become a citizen of the United States, and be further enacted, that if any alien so ordered to depart shall prove to the satisfaction of the President, by evidence from such person or persons as the President shall direct, who are for that purpose hereby authorized to administer oaths, that no injury or damage to the United States will arise from suffering such alien to reside therein, the President may grant a license to such alien to remain within the United States as he shall judge proper, and at such place as he may designate, and the President may also require of such alien to enter into a bond to return, on such period over as he may direct, with one or more sufficient sureties to the satisfaction of the person authorized by the President to determine for the general behavior of such alien during his residence in the United States, and in violating his bond, which bond the President may require shall be forfeited.

[illegible]

And be it further enacted, that any master or commander of any ship or vessel, which shall come into any port of the United States, after the 1st day of January, shall immediately on his arrival make report in writing to the collector or other chief officer of the customs of such port of such arrival, of the vessel, specifying the name, age, the rank of nationality, the nationality from which she shall have come, the nation to which she is bound, and her cargo, and a description of the cargo, as far as he can be informed, (except such on freight, every such master or commander shall report in writing, for the purpose of obtaining a discharge of such arrival in commercial ports, vessel shall also be required, and may by each collector, at all the customs be detained, and it shall be the duty of such collector or other officer of the customs forthwith to transmit to the office of the district clerk, as of all such returns.

Such, and if further certified, that the circuit and district courts of the United States shall respectively have cognizance of all crimes and offenses, and all misdemeanors, and other offenses of the United States, are required to execute with promptness orders of the President of the United States, and every Executive of U.S. and

[illegible]

And be it further enacted, That this act shall continue and be in force for and during the term of two years from the passing thereof.

Jonathan Dayton, Speaker of the House of Representatives.

Jonathan Dayton Speaker of the House of Representatives.

Alfred

Vice President of the United States and President of the Senate

Approved June 25, 1798

John Adams
President of the United States

Attesty that this act did originate in the

Alfred

10

heard and
from the
States for
was argu-
ation. We
and admi-

Passed at a time when the United States was preparing for a war against France, the Alien and Sedition Acts allowed deportation of aliens and also restricted Americans' free speech.

transacted
can't have
District of
by some
it is no
a. b. this

as Jefferson. He ran against the Federalist candidate, incumbent President John Adams. Each side believed that the other party's candidate was a threat to the nation. Each candidate was seen by political enemies as the worst thing that could happen to the country.

One of the major issues in the campaign focused on judicial appointments. President Adams had appointed federal judges who held political philosophies similar to his own. Jefferson was critical of those judges and their judicial viewpoints. The Federalists did their best to quiet the opposition, especially through the Sedition Act, but in the end, Jefferson and his party carried the day.

The election results turned out to be quite close. Although Jefferson narrowly defeated Adams, the election was not settled. Jefferson and his vice presidential candidate, Aaron Burr, tied in the Electoral College. According to the Constitution, the outcome of the election now rested with the sitting House of Representatives. Because the newly elected Republican Congress was not yet sworn in, the election was to be decided by the Federalist-dominated Congress! Many of those Federalists in Congress did not trust either Jefferson or Burr. Vote after vote failed to resolve the issue. Finally, after weeks of squabbling over the issue, Jefferson was declared the winner of the presidential contest.

The bitter election campaign of 1800 was followed by the first contested presidential election. Although the election was lost, Adams and his fellow Federalists continued the fight. The now lame-duck members of Congress decided to act to safeguard their hold on power. They decided to protect the Federalists' power in the only place they could: the federal judiciary. Federalist legislators passed the Judiciary Act of 1801 on February 13. This act created several new federal judgeships, most of which Adams tried to fill before leaving office.

The Republicans recognized what the Federalists were doing: attempting to secure power in the federal government.

Jefferson and his fellow Republicans were not pleased with the court packing. In their eyes, the Federalists were interfering with the election results. This interference took three forms: (1) Outgoing President Adams was filling the newly created judgeships, (2) the outgoing Federalist Senate was confirming these appointments, and, worse still, (3) many of these were lifetime appointments.

The Republicans vowed to fix the wrongs committed by the Federalists. Thus, Thomas Jefferson was inaugurated into a politically charged situation in March 1801. The new president called for unity in his inaugural address. “We are all republicans; we are all federalists,”⁶ he stated. Nevertheless, the events of the previous few months had already set into motion a series of events in which the divide between the two sides could not be ignored. That division was going to be impacted in the Supreme Court—and the Supreme Court was led by a Federalist, Chief Justice John Marshall.



3

Chief Justice John Marshall

In 1801, Thomas Jefferson took the oath of office, becoming the third president of the United States. Deep divisions faced the new administration, and no division loomed larger than *Marbury v. Madison*. That case would soon come before the Supreme Court and thrust the judiciary into the national spotlight. At the center of the case and its controversies was John Marshall, the chief justice. Marshall was an acknowledged Federalist presiding over a case in which a Federalist government employee sued a Republican administration. Many experiences helped shape the chief justice into the man who wrote the *Marbury* decision, and they give insight into Marshall's reasoning and temperament.

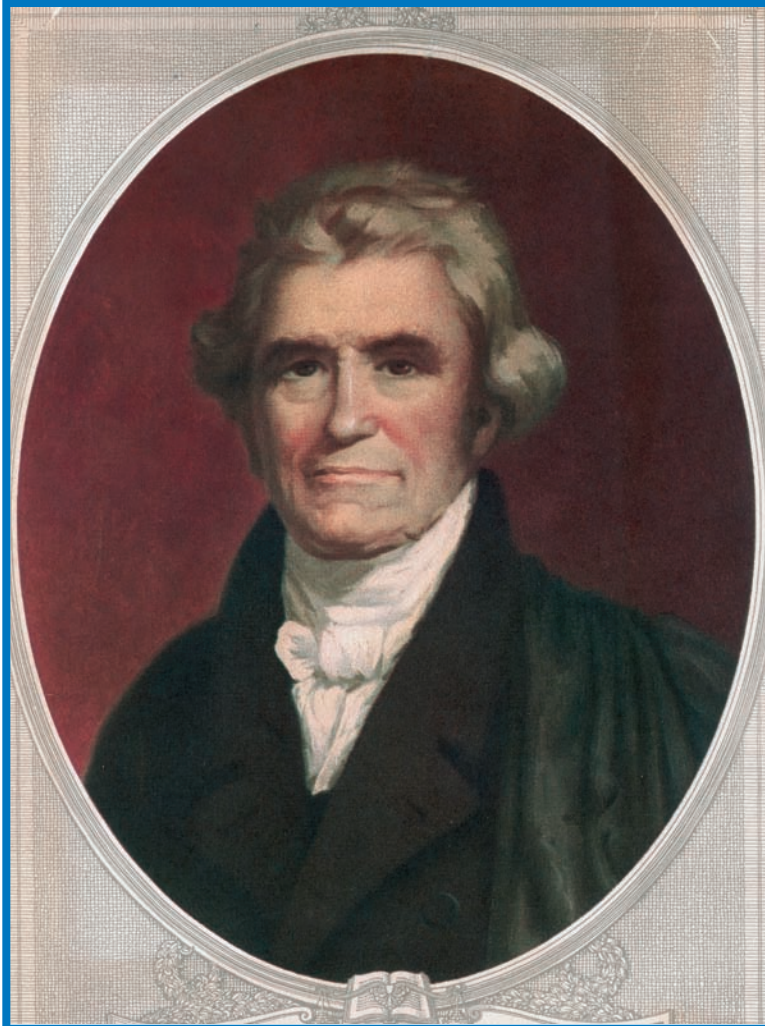
John Marshall was born in Virginia on September 24, 1755, at Germantown (now called Midland). His family lived on the Virginia frontier, in present-day Fauquier County. John was the oldest of 15 children born to Thomas and Mary Marshall. Both of his parents were considered educated: Neither had enjoyed formal schooling, but both could read and write.

Like many in that day in America, Marshall was born in a log cabin. He was also born into a prominent family. His father had good connections through his marriage to Mary Randolph Keith. These connections included some of the most influential families in the state, including the Randolphs and the Lees. Each of these families was powerful and well-respected throughout Virginia. Through his mother, John Marshall was also related to Thomas Jefferson, and his father worked as a surveyor for George Washington. Thus, Marshall was well connected to the rich and powerful in his home state.

John Marshall certainly benefited from good connections, but he also profited from hard work and excellent abilities. His father believed in hard work and gained a reputation for a strong work ethic. Thomas also served as justice of the peace for the newly established Fauquier County and as sheriff, and later served in the Virginia House of Burgesses. Thus, politics and public service were well-ingrained in Marshall as a young man.

Before he was ten, Marshall's parents moved to a valley in the Blue Ridge Mountains, 30 miles west of where he was born. There, the Marshall family built a frame house. This new house signified the growing wealth and status of the Marshall family.

Although books were both expensive and somewhat scarce, Marshall seemingly had access to them. He grew up in a home that had a Bible and various works of William Shakespeare and Alexander Pope. Marshall later claimed to have copied Pope's "Essay on Man" word for word and memorized large sections of the poet's writings by the age of 12. Marshall's love of literature and poetry was apparent throughout his life.



Marbury v. Madison was the first important case of John Marshall's career. The unanimous opinion written by Marshall did not gain the favor of President Thomas Jefferson, who believed it allowed the Supreme Court too much power.

It is possible that the young Virginian was able to borrow books from the libraries of family friends such as Lord Fairfax and George Washington. Fairfax was a popular British baron who held 5.2 million acres in Virginia. The only parliamentary

lord to live in the American colonies, he was well liked and respected in Virginia for his generous spirit. He opened his large personal library to young, intellectually hungry men. One such man was George Washington, who was just 16 when he first met Lord Fairfax.

Such connections were crucial to education and future opportunities. It is important to understand that access to books in the eighteenth century was perhaps the most crucial aspect to becoming educated. Most people did not spend very much time attending school; therefore, it was essential to learn through reading or spending time learning a trade with someone more knowledgeable.

John Marshall also benefited from the experiences and teachings of a young Scottish minister in 1767. The minister stayed with Marshall's family for a year while his local congregation conducted a rather lengthy interview with the Scotsman. Marshall thus was able to learn from an educated man of status.

In 1772, Marshall received some additional education at an academy run by the Reverend Archibald Campbell. Possibly even more valuable to his education, it was also the year in which Sir William Blackstone's *Commentaries on the Laws of England* was published in the American colonies. Thomas Marshall purchased a copy of the work for his son. *Commentaries* was a compilation of English common law, which served as the basis for American common law. Marshall seemed destined to pursue a career in law.

The only other formal education John Marshall received occurred in 1780. For a six-week period, he stayed at the College of William and Mary in Williamsburg, Virginia. The institution was hardly at its height. Some of the faculty and many of the students were away serving in the Continental Army. Indeed, the college closed the following spring when Lord Cornwallis, a British general, occupied the capital city. James Madison was the school's president, but he was forced to flee in the face of the British army. Cornwallis occupied Madison's presidential

house during the occupation. While at the College of William and Mary, Marshall attended law lectures delivered by George Wythe, who also taught young Thomas Jefferson. Marshall took full advantage of the opportunity, making careful notes of each of Wythe's lectures.

The Revolutionary War began in 1775 with the battles of Lexington and Concord, Virginia, called out its militia units in May of that year. John Marshall and his father enlisted and served in support of the American cause. Thomas Marshall had already served as a captain during the French and Indian War (1756–1763), although he missed most of the major battles in that conflict. At the beginning of the Revolutionary War, Thomas Marshall was a major in a regiment of volunteers from three Virginia counties. By the end of the war, he had achieved the rank of colonel.

John Marshall enlisted in the same militia regiment as his father, and he was appointed lieutenant. It was the first time John left home for an extended period of time. He first saw combat in December 1775 at the Battle of Great Bridge in Virginia. After the militia was disbanded, Marshall followed his father into the Continental Army. Consequently, he was at some of the well-known battles, including Brandywine Creek, Germantown, and Monmouth. At Germantown, he was wounded in the hand. He earned a promotion to captain in July 1778 and was appointed to Washington's staff. As an aide to General Washington, he endured the miserable conditions with the Continental Army at Valley Forge in the winter of 1777–1778. Because the army was not a professional one, service was required only when there was a pressing need; many of the men served for only a few months out of each year.

In June 1778, at the Battle of Monmouth in New Jersey, Marshall served with the light infantry. He also saw action during the assaults along the Hudson River at Stony Point, New York, and Paulus Hook, New Jersey, in the summer of 1779. His last taste of combat occurred when Benedict Arnold led a force

into Virginia in 1781. For Marshall, the war was over, and he devoted himself to building a career in law.

Marshall was well liked by the men with whom he served. He had the ability “for leavening the dough of serious purpose with the yeast of humor and diversion.”⁷ His favorite form of diversion was pitching quoits or running in foot races. Quoits is a game similar to horseshoes in which contestants throw metal rings onto a metal post driven into a bed of clay some distance away. In races, he ran in his socks, which were dark with white patches sewn on the heels. This led the others to



THE GREAT CHIEF JUSTICE

“John Marshall’s tenure as chief justice of the United States from 1801 to 1835 came during a period of unsurpassed development in American constitutional law.”⁸ His length of service is nearly the longest of all justices and is the longest for a chief justice. There is little doubt that John Marshall can rightly be called “the Great Chief Justice.” He ultimately left his mark on the Supreme Court with his long service. Marshall presided over the Court for more than 34 years. The leadership and guidance he provided helped establish the Supreme Court as an equal branch of government. His presence also provided stability to the Court. His long term of service helped transform the Court into a place where lawyers and judges wanted to serve rather than a stepping stone to other positions.

Under Marshall, the Court heard more than 1,000 cases. Marshall wrote many opinions that helped shape how Americans view their legal system. He “set the course for the continuing evolution of the Constitution, the federal government, and the United States as a nation.”⁹ His influence in constitutional law is seen through the acceptance of judicial review in the American system, and *Marbury v. Madison* helped cement the power of the Supreme Court as an independent

call him “Silverheels.”⁸ In these recreational times, Marshall proved to be both competitive and pleasant, making him a popular man.

Marshall’s service was somewhat off and on over six years, but his time in the army shaped him. According to historian William E. Nelson, Marshall’s military service influenced him in three distinct ways: He grew to be “a committed nationalist,”⁹ George Washington mentored him, and he perfected his leadership skills, especially those that relied on building agreement.

and powerful branch of the American government. No one deserves more credit for this than John Marshall. Chief Justice Marshall himself “wrote over five hundred opinions” for the Court.^{***} Throughout that time, he consistently saw the U.S. Constitution as the primary means by which the federal government derived its power and national unity could be maintained. He protected private property rights yet sought to empower the federal government in ways not specifically mentioned in the Constitution. He helped transform the Court from a small body that was often ignored into a powerful and revered institution of government. His personality and legal mind usually overshadowed other justices who were exceptionally intelligent and capable. His reasoning often carried the argument, even when later Republican presidents continued to appoint Republican justices. His long service, his character, and his legal mind revolutionized the Supreme Court, making John Marshall the Great Chief Justice.

* Robert L. Maddex, *The U.S. Constitution A to Z*. Washington, DC: CQ Press (a division of Congressional Quarterly), 2002, p. 316.

**Ibid.

***Ibid.



John Marshall fought in the Revolutionary War's Battle of Monmouth on June 28, 1778. Ending in a standoff, Monmouth was the last major battle of the northern theatre.

These three attributes are indeed evident from his time served in the Continental Army. Men from throughout the American states and from various backgrounds and social classes made up the army. They lived, struggled, and fought side by side. The shared challenges at Valley Forge convinced Marshall that the new nation needed a strong national government that could provide for its military needs.

General George Washington's example and character greatly influenced Marshall while he was in the army. The commander-in-chief appreciated Marshall's talents and leadership potential: During the war, Marshall served four years as a member of Washington's staff. The young Virginian forever admired Washington. He later wrote the first biography of his mentor. He saw Washington as "the great leader of the

American cause”¹⁰ and called him “the greatest Man on earth.”¹¹ After the war, Marshall asked for and followed political advice from Washington.

The last quality Marshall took from his army service was that of leadership. Perhaps the most visible aspect of this learned leadership was Marshall’s ability to achieve a consensus. The future chief justice had the talent “of putting his ideas into the minds of others, unconsciously to them”¹²—of convincing others of the merits of his views. That is, Marshall was effective in persuading others to agree with one another and with him. Such a leadership skill would be put to great use in 34 years on the Supreme Court.

After his war service, Marshall enjoyed his only formal education when he briefly attended the College of William and Mary. In 1780, he was admitted to the bar. He opened a successful law practice before winning election as a delegate to the Virginia Assembly in 1782.

That same year, John Marshall married Mary Willis Ambler, called Polly. Marshall, 27 years old at the time, was 11 years older than his bride. Polly’s father was a wealthy and influential member of the elite of Yorktown, Virginia; however, the war ruined his finances. Still, John felt fortunate to marry the daughter of Virginia’s treasurer. The couple eventually had ten children, six of whom lived to adulthood. The loss of their children was hard for Polly. After the death of their last child, she suffered from poor health and was an invalid.

John and his young wife settled in Richmond, where he opened a successful law office. He maintained a home there until his death in 1835. Because of Polly’s poor health, John helped in raising the children. He also hired help to tend to household chores. His devotion to his sickly wife is an example in commitment. Marshall loved his wife to the end. Her frail body finally succumbed to her infirmity, and she died on Christmas Day in 1831. The years between the wedding and Polly’s death, difficult as they were, proved to be joyful years for the Marshall family.



This photograph shows John Marshall's home in Richmond, Virginia.

Marshall was known for his sense of humor and joke telling. Most of Richmond knew of his fondness for playing games and socializing. His personable manner was appealing to many, and he won over many potential enemies with a game of quoits or through social conversation. Marshall seemed content to live out his life as a Richmond attorney, but politics and the Federalist Party continued to beckon him. Despite his rumpled appearance and casual dress, which didn't seem appropriate for public life, Marshall had deep concern for the future of the United States. This concern, rooted within him during the Revolutionary War, eventually prevailed on him. A man as talented as Marshall simply could not remain in private life for long.

Marshall proved to be a skillful lawyer with the ability to argue cases well. His legal mind was sharp and logical, and he quickly became a respected lawyer in the state of Virginia. His most famous case involved land in northern Virginia: The

so-called Fairfax case stemmed from the large holdings of the English Baron Fairfax. Fairfax had been a Loyalist during the war, and Virginia had seized his land. Marshall argued for Fairfax and his heirs' rights to the land. He eventually won the suit, winning even more recognition as an able attorney.

Marshall was indeed successful in his law practice. He did not look the part, however. His appearance was often sloppy: Sometimes his clothes did not match, and his hair was usually unkempt. He certainly did not give the impression that he was one of Virginia's most capable attorneys.

After the war, Marshall became politically active, serving in the Virginia House of Delegates from 1782 to 1790 and 1795 to 1796. Marshall's and his party's view of nationalism often put him at odds with leading Republicans in the state. He became one of the influential leaders in the Federalist Party in Virginia, and the political hostility between him and Thomas Jefferson began and grew. The two Virginians often opposed one another indirectly.

While he held a seat in the House of Delegates, Marshall found himself appointed to another position of crucial importance: He served as a delegate to the Virginia convention that eventually ratified the U.S. Constitution, replacing the Articles of Confederation. He supported the new constitution, speaking in favor of it and voting to adopt it. At the convention, Marshall spoke before the body three times. On the last occasion, the issue was the role of the federal judiciary. He believed that the new federal judiciary would be a "great improvement" over the system under the Articles of Confederation. The new system would allow cases to be decided because there was to be a Supreme Court empowered with final authority. More important, Marshall argued, the federal judiciary would have the power of judicial review over congressional acts. Specifically, if the new judiciary found a federal law to be unconstitutional, then the Court "would declare it void."¹³ Marshall argued for the Court's power of judicial review before the Constitution was even adopted!

President Washington offered to appoint Marshall to two different federal offices. The first was U.S. attorney general. The second was minister to France. Marshall declined both offers and instead dedicated himself to his expanding law practice. The call of public service was strong, however: In 1797, President John Adams called on Marshall to help ease tensions between the U.S. and France, and Marshall reluctantly agreed to go to France. The decision ultimately thrust him into the national spotlight, where he would remain for the rest of his life.

While in France, Marshall became involved in an international diplomatic dispute known as the XYZ Affair. It began in March 1797, when Marshall, Charles Cotesworth Pinckney, and Elbridge Gerry tried to negotiate a settlement with France. The French had seized American ships, and many within the Federalist Party favored war with France. The American delegation wanted to negotiate an understanding with France to avoid an armed conflict.

Three French agents, referred to in American documents as “X,” “Y,” and “Z,” insisted that the American diplomatic team pay a large bribe just to meet with them and to begin working out an agreement. The French officials also demanded that the United States loan the French government \$12 million and that President Adams issue an official apology for some remarks he made about the French.

The American representatives refused to entertain any discussion of bribery. In fact, when the French first mentioned the sum, the Americans replied, “Not a sixpence.” The story was retold in the United States with a bit more bluster: “Millions for defense, sir, but not one cent for tribute!” The latter was probably not said to the French, but it was a rallying cry for Adams’s supporters and for those who desired war with France.

The American commission suggested many of the same terms that they had negotiated with Great Britain in 1794 in Jay’s Treaty. Under that agreement, Britain allowed the United

States to trade with British merchants without paying additional taxes or fees. Unfortunately for Franco-American relations, the French refused to negotiate with either Marshall or Pinckney. Then, the host government expelled Marshall and Pinckney, sending them back to the United States in 1798. Gerry stayed on in a vain attempt to negotiate a deal with the French.

The XYZ Affair helped make Marshall a national hero. He returned home to Virginia a well-known and easily recognized figure. Jefferson and many pro-French Americans expressed anger over the incident, but most of the country viewed Marshall and Pinckney as worthy patriots and treated them more like celebrities. Jefferson had close ties with and strong feelings for France, and this no doubt added to the rift between him and Marshall.



The XYZ Affair is the subject of this political cartoon. The 1798 British engraving satirizes the relations between France and the United States after the XYZ Affair that year. In the cartoon, Frenchmen plunder the United States, while five figures representing other European countries remain uninvolved.

This recognition and the endorsement of Patrick Henry landed Marshall in the race for a seat in the U.S. House of Representatives. He ran as a Federalist even though there was a great deal of Republican support and anti-Federalist sentiment in the district. Despite this, Marshall won the election. This was quite a feat.

When a seat on the Supreme Court opened up in 1798, President John Adams wanted to appoint Marshall to fill the vacancy. Marshall turned down the offer so he could remain in Richmond. A year later, he listened to George Washington, who advised him to run for Congress. Marshall's campaign was successful, and he won the congressional seat in 1799. That same year, Washington died. As Washington's personal and family friend, Marshall announced his death to America. At the funeral, Marshall delivered the eulogy. He also served as chair of the committee that proposed building a monument in the new capital of Washington, D.C., to honor our nation's first president.

While serving as a member of Congress, Marshall strongly supported President Adams. In 1800, Adams appointed Marshall secretary of state. At the end of that year, after Thomas Jefferson defeated Adams in the presidential election, Chief Justice Oliver Ellsworth resigned. Adams offered the post to John Jay, the nation's first chief justice. Although Jay's nomination sailed through the Senate, it was not to be. Jay had resigned as chief justice in 1795 to become governor of New York, and another stretch of service did not seem likely. Even Adams realized that Jay's rejection of the offer was "most probable."¹⁴ Even worse for the president, there seemed to be no suitable alternatives.

Adams viewed one of the sitting justices as the most likely replacement candidate. This man, William Cushing, was a loyal Federalist and seemed to be the ideal candidate—except for one thing: his health. The 68-year-old Cushing often missed participating in cases on the court. Thus, while Adams waited for Jay's

response, he wrestled with the odds that a Chief Justice Cushing might die or end up retiring early. Such a turn of events would defeat the whole purpose of Adams's effort to stack the courts with Federalist judges before Jefferson took office.

Adams once said that "the appointment of Marshall was the proudest act" of his life.¹⁵ It appears, however, that Adams more stumbled onto his proud act than planned it. One January morning in 1800, Adams finally received word from his nominee. John Jay refused the appointment. Jay told Adams that he did not want to serve "under a system so defective" that the Court would never "obtain the energy, weight, and dignity which were essential to the National Government. . . ."¹⁶ It had taken him more than four weeks to inform Adams that he did not intend to serve as chief justice, so Adams had to act quickly. He could no longer look for the one whom he most wanted as chief justice. Instead, he had to appoint someone who would agree to serve.

It happened that John Marshall was with Adams shortly after the president received word of Jay's rejection. The two were talking about the situation when Adams asked, "Who shall I nominate now?"¹⁷ Marshall told him he did not know whom the president should nominate. Then, unexpectedly, Adams offered the post to his secretary of state: "I believe I must nominate you."¹⁸ Although Marshall himself related this version of events, it is likely that Adams already knew who he would name as chief justice. Marshall was intelligent, a loyal Federalist, and a youthful 45 years old. Adams viewed his secretary of state as a man "in the full vigor of middle age."¹⁹ Marshall himself had never heard his name even mentioned as a possible candidate as chief justice. When Adams told his secretary of state of his intentions to name him the next chief justice, Marshall was "pleased . . . and bowed in silence."²⁰ Adams sent the nomination to the Senate on January 20, the same day that the House passed the Judiciary Act of 1801. Historian David McCullough claimed that "Adams's appointment of Marshall was second



Founding father John Jay served as president of the Continental Congress, co-authored the *Federalist Papers*, and was the first Chief Justice of the United States.

only to his nomination of George Washington to command the Continental Army twenty-five years before. Possibly the greatest Chief Justice in history, Marshall would serve on the Court for another thirty-four years.”²¹

Marshall’s nomination did not impress everyone. Even some of Marshall’s friends criticized the appointment. Their main concern was his “political moderation,” not his ability.²² One Federalist described Marshall as “a man of very affectionate disposition, of great simplicity of manners, and honest and honorable in all his conduct” before complaining that the new chief justice was “disposed on all popular subjects to feel the public pulse. . . .”²³ This ability to understand what public opinion would allow would serve Marshall well during the *Marbury* trial. The same friend later recognized this strength in Marshall, claiming that the Virginian’s “real worth

was never known until he was appointed Chief Justice.”²⁴ To a large degree, Marshall’s ability to filter his decisions through the lens of public opinion helped ensure the independence of the judiciary, which was indeed worth something to the young nation.

Regardless of the criticism from within his own party, Marshall was confirmed to head the Court. As a result of a lack of available help, Marshall served as both secretary of state and chief justice through the end of Adams’s term, and the remaining weeks were indeed busy. The recently passed Judiciary Act created several new judgeships. Sixteen of these justices were for the newly created six circuit courts, double the number that existed before 1801. The 1801 act also reorganized the federal district courts by creating ten additional district courts. In most cases, the existing district judges still presided over the new courts; however, some new judges were needed because the law created two new districts, one of which included the nation’s capital. In addition, the 1801 law created a large number of justice of the peace positions.

Adams intended to fill every position before his term expired. Each appointee’s name was submitted to the Senate for approval. After being confirmed in the Senate, the official paperwork was sent back to Adams for his signature. Finally, each set of papers needed to be certified by the secretary of state’s office before being mailed to the new judge. Thus, Adams and Marshall were quite busy in the closing days of the Adams administration.

Adams appointed the judges, and they were confirmed in the last few hours of his administration. Adams and Marshall literally stayed up late the night before Jefferson’s inauguration in order to finish the paperwork for these positions. Critics called these justices the “midnight appointments” because they occurred so late in Adams’s presidency.

Forty-two of these midnight appointments were justices of the peace in the District of Columbia. The Federalist Senate

had approved the appointments and the commissions were signed and sealed, but they had not been delivered when Jefferson took office in March 1801. Jefferson instructed his secretary of state, James Madison, not to deliver some of them. Twenty-five of the 42 received their commissions, but the other 17 did not. Four of these 17 men were William Harper, Robert Townsend Hooe, Dennis Ramsay, and William Marbury. Led by Marbury, the men filed a suit demanding their commissions. It was the beginning of perhaps the most important court case in U.S. history.

Marbury and the others filed a motion to ask the Court to order to Madison to deliver their commissions. The case, known as *Marbury v. Madison*, became the landmark case for the power of judicial review. *Marbury* determined the extent of the court system's independence and whether the Supreme Court would have equal footing with Congress and the president.



4 Adams and Marbury

In order to better understand *Marbury v. Madison*, it is important to be familiar with several individuals aside from Chief Justice John Marshall who were central to the case. Some of these people were on the fringe of the case. Others were the leading characters in the drama that unfolded. Each played an important role in the case that changed the course of American history. William Marbury initiated the lawsuit that allowed Marshall and the Court to assert the power of judicial review. He sued because he did not get the position to which he had been appointed. President John Adams appointed Marbury to the post of justice of the peace.

JOHN ADAMS

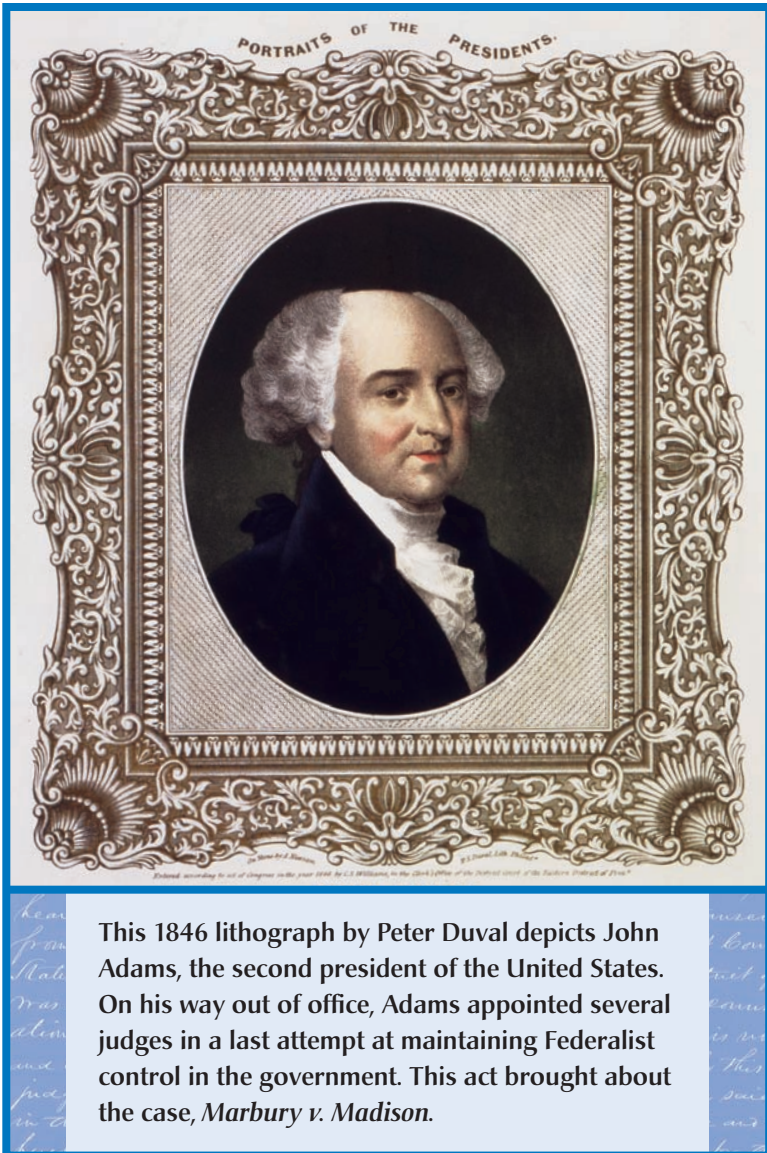
John Adams was president of the United States from 1797 to 1801. He appointed several judges from his own party after losing the election of 1800 and seemed intent on packing the judiciary with Federalists before relinquishing the presidency to Thomas Jefferson. His early life experiences were crucial in shaping his political beliefs—beliefs that differed from Jefferson's.

John Adams was born on October 30, 1735, in Massachusetts, in the village of Braintree, now called Quincy. Since the community's founding, Adams's family had been well respected there. His father, also named John, was a leading member, involved in the local militia and city government.

As a young man, Adams tried teaching for a time. He was not well-suited for that profession, but while teaching in Worcester, Adams met an able lawyer named James Putnam. The disgruntled teacher decided to pursue a career in law and learned under Putnam. In 1758, he returned to Braintree to open his own law practice. His reputation grew and as a result he traveled more, especially to Boston.

Eventually, Adams's law practice provided him with the opportunity to bond with some of the influential leaders in Boston. Among his connections were his distant cousin Samuel Adams and James Otis, Jr. With them, Adams became a member of a Boston association for lawyers. This group met regularly to discuss the law and debate legal topics of the day. When the British Parliament passed the Stamp Act, Adams and others debated the legitimacy of the legislation. Based on his participation in these discussions, Adams wrote a series of newspaper articles rejecting Parliament's actions and asserting that God alone granted rights to English citizens.

Back in Braintree, Adams led the local protest against the Stamp Act. His planned protest was replicated by other communities throughout New England. Adams was now viewed as a leading citizen in Braintree, and he was elected to the office



of selectman. His growing practice kept him in Boston, and he relocated there in 1768. An incident there in 1770 helped Adams win national attention. A commotion between a crowd and British soldiers ended in bloodshed: Five colonists died and six others were wounded. Adams's cousin Samuel dubbed the incident "the Boston Massacre." John Adams served as defense

counsel for the British soldiers, who were accused of murder. He faced harsh criticism from the local press, but he and his partner, Josiah Quincy, successfully defended the soldiers.

After the Boston Tea Party and Parliament's harsh response to the colonies, Adams was elected to the First Continental Congress in 1774. As a delegate, he pressed for actions that would lead to American independence. Adams nominated and then argued for the Congress to appoint George Washington commander-in-chief of the Continental forces. He also insisted on the creation of a navy to oppose the British fleet. Adams served with Benjamin Franklin on the committee that helped edit Jefferson's Declaration of Independence. Early in the Revolutionary War, Adams worked tirelessly to support the troops with necessary equipment and resources.

In 1778, Adams was sent to Paris to help negotiate a military alliance and commercial treaty with France, an almost perpetual enemy of England. By the time he arrived, the treaty had already been negotiated. Adams returned to Massachusetts, where he served as a delegate to the state constitutional convention. His contributions to that constitution were extensive—he drafted most of the articles in that document. The state convention ended, and Adams was again called into diplomatic service. Congress expected to begin negotiating a peace settlement with England, and while waiting for the negotiations to begin, Adams went to the Netherlands. There, he obtained Dutch recognition of American independence and a commercial treaty. In 1782, Adams joined Benjamin Franklin and John Jay in negotiating with the British. Under the Treaty of Paris, Great Britain recognized American independence and American claims to lands west to the Mississippi River.

After the negotiations ended, Adams toured England with his son John Quincy. He retained his position and negotiated agreements that resulted in loans to the young American nation. Adams was appointed as the first U.S. ambassador to Britain in 1785. Thus, the former revolutionary who edited and signed

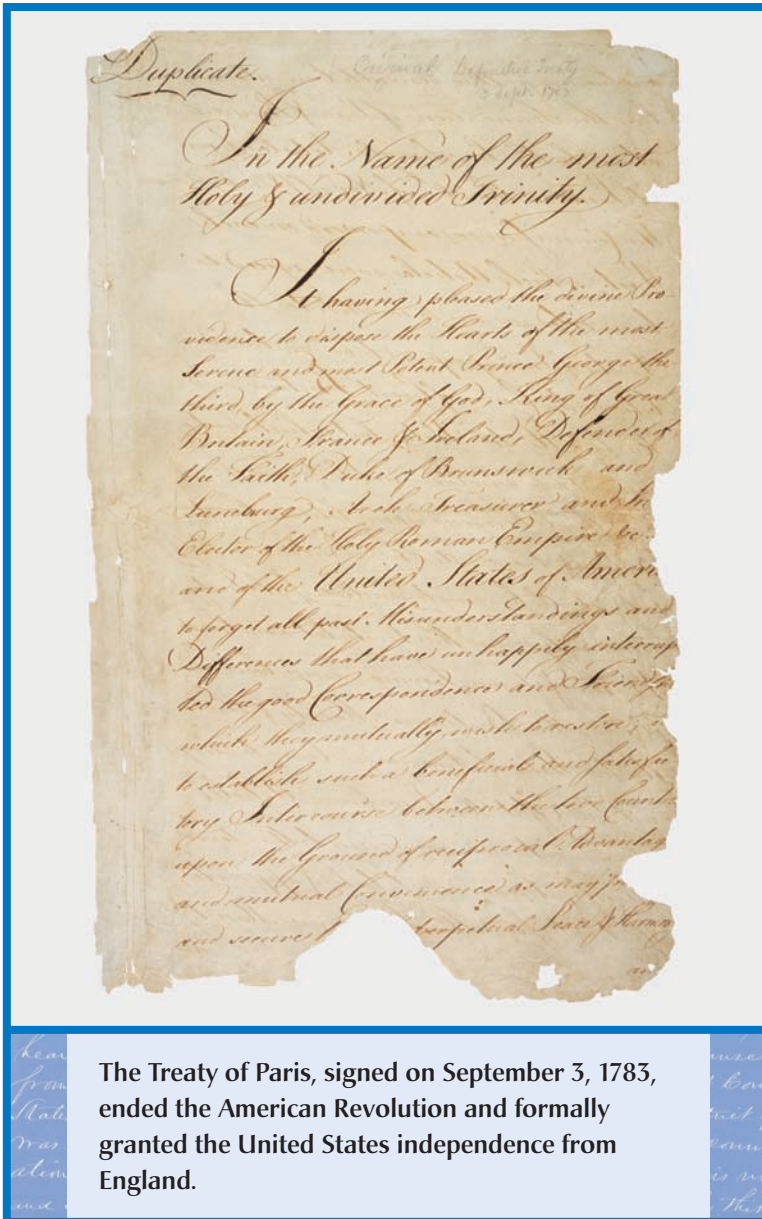
the Declaration of Independence was the first to represent the American government to his former British government. Adams returned to America and supported the ratification of the new Constitution in 1788. He was the first person elected vice president and served both terms of the Washington administration.

While vice president, Adams demonstrated his tendency to support a strong centralized government. This viewpoint often placed him at odds with Secretary of State Thomas Jefferson, although Jefferson's feuds with Alexander Hamilton were more prominent. More important, Adams presided over a closely divided Senate, where he often cast the deciding vote. Again, his voting record reveals his support for expanding the powers of the new national government, especially those of the president.

During Adams's vice presidency, an ongoing war between Britain and France led to intense debates between the Federalists and Republicans over foreign policy. The Federalists favored establishing warmer relations with Britain. The Republicans sided against the British monarchy, supporting France in the midst of that country's revolution. At issue was Jay's Treaty, signed in 1794. This treaty reduced the likelihood that the U.S. and Britain might go to war. The Republicans attacked the agreement, but to no avail. Public opinion seemed to support the administration.

Adams served with distinction and was the most obvious successor to the presidency when Washington refused to seek a third term in 1796. In keeping with his political philosophy regarding elections and candidates, Adams allowed Alexander Hamilton to lead the Federalists while he tried to stay above the political fighting. This behavior angered Hamilton, who unsuccessfully tried to replace Adams with Thomas Pinckney as the Federalist candidate. Hamilton's maneuvers divided the party and nearly cost the Federalists the election, but Adams managed to win a slim majority in the Electoral College.

As president, Adams sought to end the political bickering. He retained most of Washington's cabinet, and many of



them were loyal to the Hamilton wing of the Federalist Party. Thus, some within his own cabinet worked to undermine his policies and executive leadership. The sensitivity of foreign relations with France reached a head during the XYZ Affair. After insulting American pride by demanding a bribe to open

the negotiations, the French government authorized the illegal detainment of American ships on the high seas. Adams responded by calling for the formation of the United States Navy and for increased military spending. The Republicans angrily denounced the actions as unnecessary. Adams's desire to bring political fighting to an end failed, and the differences between the two parties could not be overlooked any longer. Increasingly, the Republicans began to view Adams as a danger to the republic.

Somewhat predictably, the Federalists rallied around their president. Congress passed the Alien and Sedition Acts to weaken the Republican voting base and discourage public criticism of presidential policies. Even though the laws were hardly enforced, the damage was done. Adams and the Federalists appeared intent on having a national government with great authority, including the power to deny those with opposing viewpoints the opportunity to speak out.

The political situation cost Adams dearly. The president enjoyed support within his own party, but the Republicans and other French-supporting Americans no longer trusted him. His envoy managed to conclude an agreement in 1800, thereby preventing a full-scale conflict with France. American neutrality was safeguarded, but the problems were evident: Adams's foreign policies revealed a deep divide within the Federalist Party. Adams forced two of his cabinet members out because of their loyalty to Hamilton, and the Federalist Party struggled with itself as the election of 1800 approached. Worse still, the party dispute played out in full view of the American public: The electorate was not impressed with Adams and the Federalists. Those driven away from the Federalists found a warm welcome with Jefferson's Republicans.

Voters overwhelmingly rejected Adams and his Federalists: Jefferson became president and the Republicans gained control of the House of Representatives and the Senate. Adams and his party were concerned that a Republican-led government would

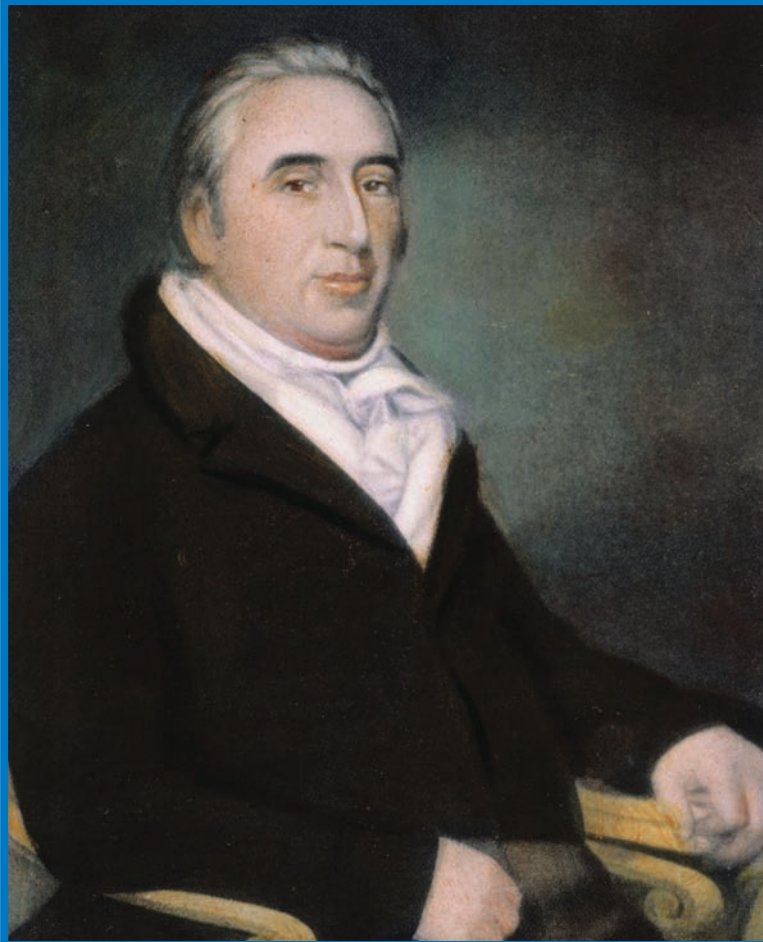
result in anarchy and chaos, however. To safeguard their political ideology, the Federalists set about reorganizing the federal court system. These actions led directly to *Marbury v. Madison*.

WILLIAM MARBURY

Perhaps the most important of the midnight appointments was a man named William Marbury. Historians know little about Marbury. He was from Annapolis, Maryland, and was 41 years old when *Marbury v. Madison* came before the Supreme Court. Marbury served as an assistant to Benjamin Stoddert in Washington, DC. Stoddert was well known in Federalist circles as a loyal member of the party and had served as the first secretary of the Navy in the Washington administration. Adams probably named Marbury to the justice of the peace position because of these Federalist connections.

Marbury was one of 42 justices of the peace nominated after Adams lost the election. President Jefferson did allow many of the undelivered commissions to be sent: Twenty-five of the 42 midnight appointments still received their commissions. It seems that Jefferson intended to deny positions to only the most partisan of the new appointments. Considering the number of appointed positions Jefferson left in office, it is apparent that he did not intend to fully undo all that Adams had done during his final days as president.

Outgoing President Adams made the so-called “midnight appointments” on March 2. The Federalist Senate quickly confirmed the justices the next day. The Senate had to hurry because its members’ terms ended on March 4. Adams’s term also ended on March 4, when Thomas Jefferson took the oath of office. When Jefferson became president, the process for installing the new justices was all but complete. Most of the new officeholders had already received their official commissions—but some had not. For the latter group, the actual delivery of the paperwork was all that remained to finalize the judicial appointments.



This is one of the rare portraits of William Marbury, the Adams-appointed justice of the peace, whose lawsuit led to the landmark Supreme Court case, *Marbury v. Madison*.

Jefferson had already suffered the indignity of waiting for the Federalist Congress to do the right thing and declare him the winner of the presidential contest. Now he was president and the undelivered commissions gave him the opportunity to derail the Federalist agenda. The new president ordered his secretary of state, James Madison, to not deliver the commissions to the recently appointed justices.

Marbury was one of the justices who did not receive his commission. He knew that Adams had appointed him to a justice of the peace position. He also knew that the Senate had confirmed his appointment. He waited, but the commission never arrived. Suspecting that the new administration planned to deny him his judicial appointment, he filed a lawsuit.

In 1789, Congress had passed the Judiciary Act. This was the first of several laws that dealt with the judiciary. The 1789 law established and organized the federal court system; it also gave the Supreme Court the power to issue writs, or court orders. The Judiciary Act of 1801 created several new justice posts, including Marbury's. Because Madison refused to deliver the paperwork, Marbury filed his suit in the Supreme Court. He asked the Court to order Madison to deliver the commissions to the remaining appointees. Ironically, John Marshall had been the secretary of state who had failed to deliver the paperwork in question. Now he led the U.S. Supreme Court that would decide the case.



Jefferson and Madison

5

John Adams and William Marbury came to represent the Federalist side of the issues involved in the case, and Thomas Jefferson and James Madison came to represent the Republican side. Jefferson was the president who ordered his secretary of state to withhold the paperwork that would have given Marbury his appointed position. James Madison was the secretary of state who followed Jefferson's directive and became the defendant in *Marbury v. Madison*. Why did Jefferson and Madison behave as they did? To answer this, it is important to examine their lives and their politics leading up to 1801.

THOMAS JEFFERSON

Thomas Jefferson was president at the time of *Marbury v. Madison*. He was a gifted man who had already made enormous contributions to his country. He and his distant cousin, John Marshall, had many similarities, but the two were quite different in their views of the role of government.



This portrait of Thomas Jefferson was painted in oil in 1805 by Gilbert Stuart. A man of great intellect, artistic talent, diplomatic skills, and forward-thinking ideas, Jefferson's influence still resonates in the United States today.

Thomas Jefferson was born at Shadwell in present-day Albemarle County, Virginia, on April 13, 1743, to Peter and Jane Jefferson. They were property owners and well off, but certainly not considered wealthy. His mother, Jane Randolph Jefferson, was from the Randolph family, one of colonial Virginia's most prominent and wealthy families.

In 1760, Jefferson went to Williamsburg, the capital of colonial Virginia. There, he attended the College of William and Mary and met some of the most influential men in the colony, including the acting governor, Francis Fauquier. Later, he studied law under George Wythe. He worked with Wythe for five years before opening his own practice at the age of 24.

In 1769, Jefferson was elected to the Virginia House of Burgesses, where he served for six years. In 1770, Jefferson began to build his mansion, Monticello. He designed the house himself and even invented features never before used in homes. It took years to complete it, because Jefferson meticulously pored over every detail of the great house. Monticello was partially finished soon enough to allow him to move in with his bride shortly after their wedding. Jefferson married Martha Wayles Skelton on January 1, 1772. They had six children, but only two of them lived to adulthood.

In 1774, Jefferson wrote a short political booklet called *A Summary View of the Rights of British America*. In this pamphlet he argued that allegiance to the king from the colonies was voluntary, saying that "the God who gave us life, gave us liberty at the same time: the hand of force may destroy, but cannot disjoin us."²⁵ The pamphlet was widely read throughout the colonies, and people outside of Virginia began to notice the red-haired revolutionary of Monticello.

Jefferson was elected to the Continental Congress in 1775. On June 11, 1776, while meeting in Philadelphia, the Congress appointed Jefferson as chair of a committee to draft a document that would assert American independence from Great Britain. Jefferson, John Adams, and Benjamin Franklin

served together on this committee. Adams and Franklin urged Jefferson to write the draft, to which they then made some alterations. The document was revolutionary. It asserted that “all men are created equal” and that governments only existed by “the consent of the governed.” Such language was radical for that day and age, but Jefferson intended to communicate what many Americans believed. After the committee made its edits, the revised Declaration of Independence was sent to the full Congress for approval.

After working in Congress and writing the Declaration of Independence, Jefferson returned to Virginia in late 1776. There, he served in the House of Delegates and was later elected governor of Virginia, serving in that capacity during the Revolutionary War. His lack of action to protect the capital during a British invasion, coupled with his flight in the face of the approaching enemy troops, led to harsh criticism. An inquiry conducted by the Virginia Assembly fully exonerated him and his conduct, however. To smooth over the insult, the legislative body unanimously passed a resolution expressing appreciation to him for his conduct. Jefferson remained resentful of the entire affair.

In September 1782, Jefferson’s wife died. Despite his grief, he ran for a seat in Congress the next year and won. While serving in the House, he introduced legislation that resulted in the adoption of coinage based on the decimal system. He also pushed for the establishment of territories in the western lands, insisting that said lands be allowed to govern themselves and eventually be welcomed into the United States as states.

In 1784, the future president left America to serve his country in Paris. He was named the American minister to France in 1785, following Benjamin Franklin in that post. While there, Jefferson saw the beginnings of the French Revolution. He left Paris in September 1789, he believed temporarily, to return to America and tend to his affairs. While he made his way across the Atlantic, however, Washington nominated and Congress



An architectural masterpiece, Monticello was Thomas Jefferson's estate in Charlottesville, Virginia. Jefferson himself designed the home as well as many of its ingenious features.

confirmed his appointment as secretary of state. Somewhat unwillingly, he submitted to Washington's pleas for him to accept the position.

As part of the Washington cabinet, Jefferson found himself at odds with Alexander Hamilton, the treasury secretary. Hamilton was a staunch Federalist who favored formal ceremonies and all the trappings of government. Hamilton also tended to be pro-British, whereas Jefferson leaned toward the French in matters of foreign affairs. Even more of a concern to Jefferson were Hamilton's financial programs that expanded the size and role of the federal government. Hamilton wanted the federal government to assume the war debts still owed by the states. Jefferson viewed this as a way in which the federal government

might grow too large. When some in the south clamored for the national capital to be moved out of New York City, the idea for a deal was born. Jefferson supported moving the national capital to a southern state. Jefferson and Hamilton compromised, creating a new capital in what is now Washington, DC, out of land that belonged to Virginia and Maryland, and allowing the national government to assume the states' war debts. This deal satisfied Hamilton's wish to expand the power of the federal government and Jefferson's desire to relocate the capital closer to his home state of Virginia.



JEFFERSON AND MARSHALL

Thomas Jefferson and John Marshall had a great deal in common. Both were born and raised on the Virginia frontier. Each was greatly influenced by his father. Both believed in the value of education. Each spent some time in the colonial capital of Williamsburg. The two were even distantly related, and Jefferson's first love rejected him, eventually marrying Marshall's father. Each also was a somewhat sloppy dresser: Marshall was well-known for his poor dress habits, and Jefferson once offended a British diplomat by greeting him in his pajamas and slippers!

In rare instances, the two even agreed on political matters. For instance, Marshall broke with his party and opposed the Alien and Sedition Acts, viewing them "useless and unwise," and Jefferson saw the laws as "infamous."^{*}

The similarities end there. Jefferson was an unabashed Republican, whereas Marshall belonged to the Federalist Party. These two men came to represent differing political philosophies. Each left his mark on the American nation. Each did not care for the other.

The chief justice knew Jefferson "well and distrusted him greatly."^{***} He believed Jefferson to be too powerful to be trusted. Evidently,

During his tenure as secretary of state, Jefferson gradually lost more and more arguments to the Hamiltonian faction in the administration. Eventually, Jefferson grew frustrated to the point he could no longer continue to serve. He resigned at the end of 1793 and returned to Virginia, hoping for a quiet life of retirement from public affairs.

The realm of politics called Jefferson back into service. Washington stepped down after two terms in office, and Jefferson allowed his name to be put forward as a candidate for president in 1796. He lost to John Adams, Washington's vice

Marshall did not hide his feelings toward the president. One Jefferson biographer described Marshall as one "who hated Jefferson with an ardent hate."^{***}

Jefferson did not trust Marshall, in part because of his role in the "midnight appointments" at the end of the Adams administration. He feared that Marshall was slowly re-creating American society in undemocratic ways. Even in his 80s, having retired from public life, Jefferson still lamented the Marshall Court as "an instrument which, working like gravity, without intermission, is to press us at last into one consolidated mass."[†]

Jefferson and Marshall: Two American leaders who could not get along with each other.

*Saul K. Padover, *Jefferson*. Old Saybrook, CT: Konecky & Konecky, 1942, p. 258.

**William E. Nelson, *Marbury v. Madison: The Origins and Legacy of Judicial Review*. Lawrence: The University of Kansas Press, 2000, p. 49.

***Padover, *Jefferson*, p. 284.

†Francis N. Stites, *John Marshall: Defender of the Constitution*. Boston: Little, Brown, 1981, p. 135.

president, but he became vice president to Adams when he finished second in the electoral balloting. Adams and Jefferson eventually clashed over American relations with Britain and France. The XYZ Affair resulted in popular support for Adams's policies, but the Federalist Congress overextended its political reach with the passage of the Alien and Sedition Acts in 1798. These laws greatly restricted the rights and freedoms of Americans and noncitizen residents.

In response to the Alien and Sedition Acts, Jefferson privately wrote the Kentucky Resolutions. These resolutions asserted that the Constitution only created a compact between the states. As such, the federal government had no right to exercise powers not explicitly granted in the Constitution. The resolutions also stated that states had the right to ignore such federal acts as unconstitutional if and when the federal government assumed rights not delegated to it. Jefferson's Kentucky Resolutions claimed that states reserved the right to determine the constitutionality of federal actions. Considering the issues and outcome of *Marbury v. Madison*, these resolutions paint a clear picture of where Jefferson stood on the issues of the case. Following Kentucky's example, Virginia passed a similar set of resolutions.

In 1800, Jefferson and Adams again squared off in the presidential election. This time, Jefferson and the Republicans won an overwhelming victory. As well as winning the presidency, the Republicans gained control of both houses of Congress. As described earlier, a peculiarity in the Constitution's electoral provisions delayed the outcome of the election. Jefferson and his running mate, Aaron Burr, tied in the Electoral College. The Federalist-controlled House of Representatives toyed with the idea of denying Jefferson his hard-fought victory. In the end, Jefferson's old adversary, Alexander Hamilton, helped him triumph. Hamilton was certainly no friend to Jefferson, but he nonetheless supported the Virginian over Burr. Hamilton's support helped shift the vote in the House of Representatives, and Jefferson became the nation's third president.



Before Washington, D.C., became the capital of the United States, New York City was the seat of government.

Between the election and Jefferson's inauguration, Adams and the Federalists set about trying to pack the court system with Federalists. These actions did not please incoming Jefferson. He later said, "I can say with truth that one act of Mr. Adams' life, and one only, ever gave me a moment's personal displeasure. I did consider his last appointments to office as personally unkind."²⁶ In reality, Jefferson was extremely concerned about the courts and what they might do during his presidency. Privately, the new president described Adams's appointments as "an outrage on decency."²⁷ The court packing and last-minute appointments became the basis for *Marbury v. Madison*.

JAMES MADISON

James Madison was the secretary of state who refused to deliver Marbury's commission for a justice of the peace position in Washington, DC. Madison was more than just Jefferson's

secretary of state, however. He had accomplished a great deal prior to entering Jefferson's administration. He was also destined to become president of the United States, winning the elections of 1808 and 1812.

James Madison was born to James and Nelly (Conway) Madison in Port Conway, Virginia, on March 16, 1751, in the home of his mother's parents. Soon afterward, his mother returned with him to Orange County, where Madison maintained a home on a 5,000 acre farm for the rest of his life. He was home-schooled before attending a preparatory school. Then, he enrolled in the College of New Jersey at Princeton. There, he studied the classics in Latin and Greek and theology and religion. He earned a bachelor of arts degree in 1771. After graduation, he spent six months studying under the college president, John Witherspoon. His time with Witherspoon deeply influenced him, helping him become a man of the Enlightenment.

Madison's family lived on the frontier and purchased land in Kentucky during the Revolution, so it seemed certain that Madison would remain involved in local affairs. In 1776, he was elected to the convention that declared that Virginia was an independent state. That same body wrote a constitution for the new state. While the convention drafted that constitution, Madison argued for religious tolerance. The Virginia constitution stated a belief in "liberty of conscience for all," meaning that all citizens enjoyed true religious freedom. In 1777, Madison was elected to the Governor's Council, where he served for two years. His time in the capital city of Williamsburg brought him into close contact with two of Virginia's governors, Patrick Henry and Thomas Jefferson.

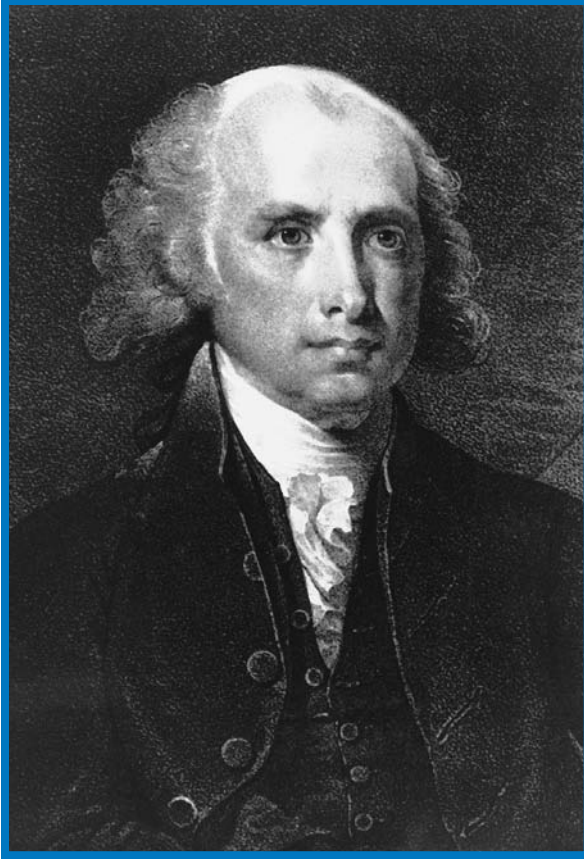
His work on the Governor's Council won him many friends and supporters, leading to his election to the Continental Congress in 1780. He served there for about four years. It was there that Madison began to stress the importance of a strong central government. Congress struggled with fighting a war with little

power and few resources, making a deep impression on Madison as to what powers a federal government needed in order to govern effectively.

During the war, Madison looked for ways to strengthen the Articles of Confederation government. Once the war was over and the peace treaty signed, he prominently advocated the need for a stronger national government until he retired from Congress at the end of 1783.

Madison went home and promptly found himself elected to the Virginia legislature. There, he sought to pass several reforms, including Jefferson's bill for religious freedom. He also encouraged Virginia to support the national Congress, but the Articles prevented such a government from having too much power. Madison was convinced that a decentralized confederation weakened a nation. Such a country would find it difficult to defend itself from external enemies and internal strife. He became one of the leading proponents for a national convention to fix the weaknesses of the Articles of Confederation. This convention finally convened in Philadelphia in the summer of 1787. It was there that James Madison helped create the Constitution that was later threatened in *Marbury v. Madison*.

While serving as a Virginia delegate to the Philadelphia convention, Madison introduced several ideas that became fixtures in the new American system. He supported giving the new government the power to tax and enforce national laws of commerce. He believed in the two-house legislature (House of Representatives and the Senate), as well as a strong executive and an independent judiciary. All of these innovations were designed to give the federal government a great deal of power but also to spread it out among the Legislative, Executive, and Judicial branches. Even with the separation of powers, there was little doubt that the new constitution created a strong national government. Madison's part in crafting that new government earned him the distinction of being "Father of the Constitution."



The fourth U.S. president, James Madison, (1751–1836) was instrumental in creating the U.S. Constitution, and he co-founded the Democratic-Republican party and doubled the size of the United States by negotiating the Louisiana Purchase.

After the convention, Madison worked with Alexander Hamilton to secure adoption of the Constitution. The two of them, with John Jay, wrote a series of supportive essays known as *The Federalist Papers*. With other notables such as Patrick Henry and John Marshall, Madison attended the June 1788 Virginia convention that eventually ratified the Constitution. Henry strongly opposed ratification, and Madison successfully argued against him.

When the first Congress was elected, Madison won a seat in the House of Representatives. There, he initiated laws to raise revenue and sponsored the first ten amendments to the

Constitution, known as the Bill of Rights. As an advisor to President Washington, Madison also prepared Washington's inaugural address and counseled him on his first cabinet appointments. In a sense, Madison not only helped create and ratify a new government, he also helped implement it.

Although he helped write the new constitution and fought for its ratification, Madison believed in limited government. That is, he believed that the federal government ought to be sufficiently strong and centralized in order to provide national defense, but he opposed the government's intervening too much into people's lives. In short, like Jefferson, he favored a government that did not threaten individual liberty. To that end, Madison opposed the Federalists throughout the 1790s.

Madison married an energetic widow, Dolley Payne Todd, in 1794. After Jay's Treaty was ratified, Madison feared that, to many in the government, commercial interests were more important than Republican ideals. He retired from Congress in 1797 and went to his Virginia home to concentrate on his plantation and state affairs. Events on the national and international stage pulled him back into national public life, however.

The policies of the Adams administration during the XYZ Affair distressed Madison. He believed that the president's actions brought America close to war with France, and his Republican beliefs led him to oppose the Alien and Sedition Acts on the basis that they endangered a free government. With Jefferson's blessing and help, he drafted the Virginia Resolutions of 1798. Although the resolutions asserted states' rights, they did not include nullification or secession, as did later proponents of states' rights. Instead, the resolutions defended individual rights and liberties against a powerful government.

In 1800, Madison worked tirelessly in support of Jefferson's candidacy. After Jefferson won the election, Madison was

appointed secretary of state. In that position, he refused to deliver Marbury's commission, which triggered a lawsuit. James Madison, Father of the U.S. Constitution, was being sued for violating someone's rights.



6

The Marshall Court in 1803

The Marshall Court was made up of a collection of successful lawyers—some of the best independent legal minds in the country. One was an Irish immigrant. Another was from Massachusetts and another from North Carolina. Two were from Virginia, and one of those was the nephew of George Washington. The last member of the Court was a political firebrand from the state of Maryland. Each was gifted and successful in his own right.

In 1803, the Supreme Court comprised six members: Alfred Moore, William Cushing, William Paterson, Samuel Chase, Bushrod Washington, and John Marshall. Under the Constitution, Congress determines the size of the Court. There have

been as few as six and as many as ten justices on the bench at one time. The current size of nine (eight justices and one chief justice) has remained unchanged since 1869.

The Supreme Court in the early nineteenth century was unique in at least two ways. First, the justices did more than serve on the Supreme Court. They also served as circuit court



The area now known as Washington, D.C., began as rural land in Virginia and Maryland. The city was developed by architect and urban planner Pierre Charles L'Enfant. This street plan shows the planned sites of the White House and U.S. Capitol.

judges. The annual Supreme Court session lasted about six weeks. During the rest of the year, the justices traveled to each of the three circuits to hold court. The circuit courts were variously located among the states, so the justices referred to this aspect of their position as “riding the circuit.” Supreme Court justices rode the circuit, sitting on each of the three circuits twice each year. In reality, riding the circuit consumed more of their time than did serving on the Supreme Court, and the physical stress of riding the circuit convinced many not to serve on the Supreme Court.

Second, Washington, D.C., was not the city it is today. Few people actually lived there year-round. Instead, the city would swell in size while Congress was in session. When the business of government went on recess, much of Washington, D.C., went home. Even Thomas Jefferson followed this practice. While he served as president, Jefferson spent more days at Monticello than he did in the capital!

The fact that few people lived in Washington, D.C., meant that when one did go to the capital city, he or she usually lived in a boardinghouse. The Supreme Court justices followed this practice during the early years of the Marshall Court. Because the men saw each other face to face for only about two months a year, this close and personal contact helped them better understand each other. It also led others to think that Marshall was somehow capable of bewitching the other justices because his influence was apparent. Whether the cause was Marshall or the shared life in a boardinghouse, the unity of the early Court is remarkable.

Even though the other justices were “men of intellectual independence,” it was not long before Marshall influenced them through his character and personality.²⁸ Jefferson resented this dominance, later describing it as “cunning and sophistry” that enabled the chief justice to “reconcile law to his personal biases.”²⁹ To Jefferson, Marshall pushed his view onto the Court, creating “a majority of one . . . by a crafty chief judge.”³⁰ It seems

that the others on the Court did not view it quite that way. Instead, they deferred to Marshall when they agreed with him. In later cases, Marshall altered his opinion in order to have the Court present a unified front.

This desire for unity was part of the force of his leadership on the Court. “Thus, it is essential to understand that as John Marshall assumed the bench following one of the most ferocious political fights in American history, he was no fanatic.”³¹ Instead, he was “a moderate who understood the importance of allowing the democratic political process to follow its course.”³² “His goal was to bring people together and to



EARLY CHIEF JUSTICES

Today, the Supreme Court is held in high regard and looked to as the final arbiter on all constitutional matters. In the early years of the republic, however, the Court was seen as the weakest branch of the new federal government. Many refused to accept appointment to the Court because it simply did not have the prominence it does today.

Three men served as chief justice before John Adams appointed John Marshall to the post in 1801. The first chief justice was John Jay, an American diplomat from New York who helped negotiate the Treaty of Paris of 1783, which ended the Revolutionary War. A strong supporter of the new constitution, Jay wrote five essays included in *The Federalist Papers*. While chief justice, he negotiated a treaty with Britain called Jay's Treaty. Jay left the Court in 1795, when he was elected governor of New York.

President Washington named John Rutledge of South Carolina to replace Jay. Rutledge had served as a state legislator and attorney general. He headed the South Carolina delegation to the Constitutional Convention in 1787. Rutledge had served on the court during its first

restore harmony and consensus, not to divide them further and thereby lead them to violence and bloodshed.”³³

The members of the Marshall Court were well-qualified men of extensive experience in law and government. The following descriptions will highlight their contributions and personalities.

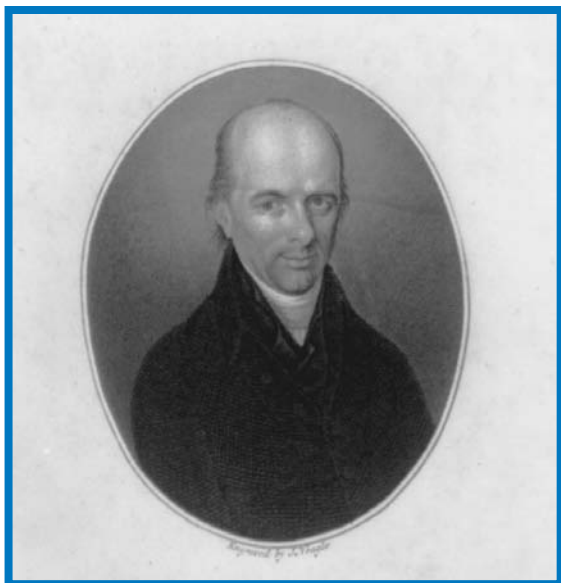
ALFRED MOORE

Alfred Moore was appointed to the Court in December 1799. The North Carolina native was born on May 21, 1755, in New Hanover County. He received his education in Boston and

session and had resigned in 1791 to become chief justice of South Carolina’s Supreme Court. After being appointed to the federal Supreme Court, he served as chief justice during the 1795 term. When Congress returned to session, the Senate rejected the nominee over some of his public comments that opposed Jay’s Treaty.

The third Supreme Court Chief Justice was Oliver Ellsworth. A native of Connecticut, Ellsworth served in the state legislature as well as the Continental Congress. He also attended the Constitutional Convention in 1787. A member of the first Congress, he chaired the committee that drafted the Judiciary Act of 1789. Justice Ellsworth served from 1796 until his resignation at the end of the fall term in 1800.

Although John Marshall was the fourth chief justice, the three previous men left little mark on the Court. Jay, Rutledge, and Ellsworth all resigned, and no case ever presented the opportunity to assert the power of judicial review during their tenures. The first three chief justices did little to increase the power and stature of the Court; that distinction belongs to John Marshall.



Alfred Moore was appointed to the Supreme Court by President John Adams. Moore served only five years on the Court, but later helped found the University of North Carolina at Chapel Hill.

later studied under his father, who served as a colonial judge. In 1775, at the age of 20, Moore was admitted to the bar. He served as a captain in the Continental Army during the Revolutionary War. When his father died in 1777, Moore left the army to return home and care for his family. There, he remained active in service to his country by joining the militia. He ran for a seat in the North Carolina legislature in 1782. He won the election and was later appointed attorney general of North Carolina. In 1792, Moore again ran for and won a seat in the state legislature. He lost his attempt to win a U.S. Senate seat in 1795.

In 1797, President John Adams selected Moore to serve on a federal commission. This commission tried to negotiate a treaty with the Cherokee Indians. Moore served only a year before resigning to become a justice on the North Carolina Superior Court. In late 1799, President Adams again named Moore to a federal post, this time to the U.S. Supreme Court.

Moore was a rather small man, weighing only 80 or 90 pounds and standing only four feet five inches tall.³⁴ Despite his

size, a colleague described him as having a “keen sense of humor, a brilliant wit, a biting tongue, a masterful logic, [which] made him an adversary at the bar to be feared.”³⁵ It seems his small size did not deter him from having a large impact. Those who knew him believed him to be intelligent and analytical.

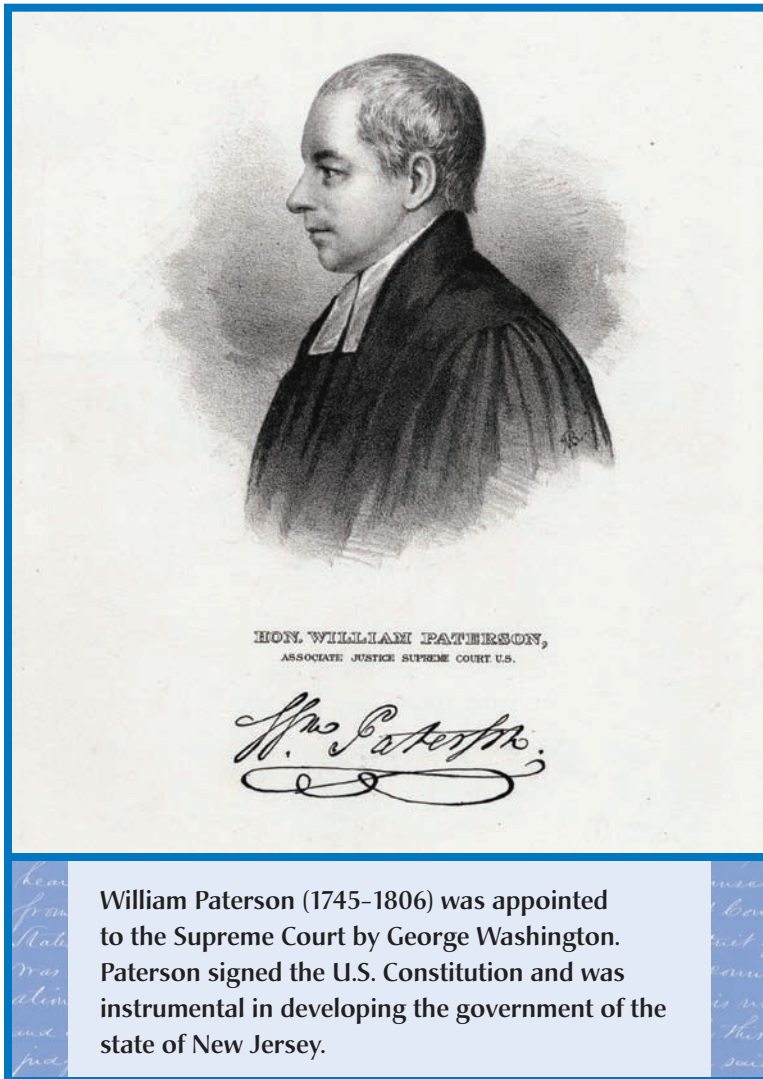
When Adams appointed the 38-year-old to the Court, it seemed likely that the new associate justice would serve for decades. Though young and intellectually vibrant, Moore’s tenure on the Court proved to be short-lived. Poor health caused him to resign after the 1804 term. He continued to suffer from health problems and died on October 15, 1810.

WILLIAM PATERSON

William Paterson was born in Ireland in 1745. He immigrated to the British colonies in America when he was young and attended the College of New Jersey at Princeton. He graduated in 1763. As a student, he was well-liked by his peers. His friends included several well-known individuals, including Benjamin Rush, one of the signers of the Declaration of Independence. In keeping with the practice of the day, after he graduated from college, Paterson studied law under a lawyer named Richard Stockton. The New Jersey bar admitted him in 1769.

Paterson also served as a delegate to the Constitutional Convention in 1787. He proposed what is now called the New Jersey Plan in an effort to allow representation in the new government to be based on statehood, not population. He also proposed that the new government have a supreme court that would serve as the final appeals court involving state cases. Although his ideas were not included in the final document, Paterson did sign the U.S. Constitution.

In 1788, Paterson was elected to the U.S. Senate, where he helped draft the Judiciary Act of 1789. In 1790, he left the Senate to become governor of New Jersey. While in that position, Paterson worked to collect and organize the laws of New Jersey, resulting in their publication in 1800.



William Paterson (1745–1806) was appointed to the Supreme Court by George Washington. Paterson signed the U.S. Constitution and was instrumental in developing the government of the state of New Jersey.

Paterson was one of the more likely candidates to serve as chief justice when the seat opened up in 1800. Both he and William Cushing were already on the Court and both were, after all, Federalists. Cushing was a longtime friend of Adams, but concerns about his age and health prevented Adams from offering the post to him. Paterson then was a probable choice. He also insisted that he did not want the position.

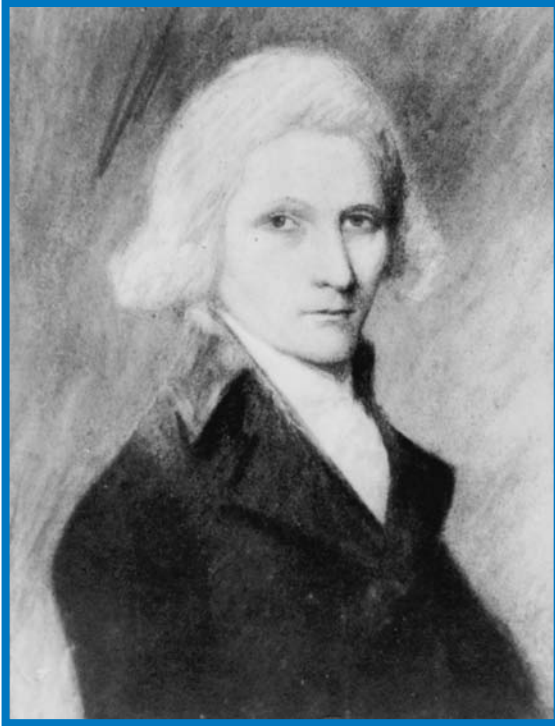
Had he wanted to become chief justice, it was not likely to happen in 1800. Paterson managed to offend President Adams by supporting a rival group—the wing loyal to Alexander Hamilton—within the party in the election of 1800. When Marshall, as secretary of state, proposed Paterson as a possible appointee, “Adams responded in no uncertain terms that he would not appoint Paterson.”³⁶ Adams wanted a chief justice who was also a Federalist who shared his vision. To Adams, Paterson simply was not that man.

Paterson served with distinction on the Court, although his Federalist beliefs were often evident in his opinions. Suffering from serious injuries he received as a result of a carriage accident, he died on September 8, 1806. At his funeral, Paterson was remembered as possessing “from nature a strong comprehensive understanding; a clear distinguished judgment; an elevated imagination and the power of commanding eloquence.”³⁷

BUSHROD WASHINGTON

Bushrod Washington was the nephew of George Washington. The Father of the United States did not have children of his own, so Bushrod was his heir and inherited the Washington estate at Mount Vernon, Virginia. He shared many of his uncle’s nationalistic views of the federal government. In 1798, Justice James Wilson died, creating a vacancy on the Court. President Adams named Washington to replace him. Ironically, this appointment came after John Marshall rejected the same offer. Washington served on the Court until his death in 1829.

Born in Virginia in 1762, Washington attended the College of William and Mary, located in the colonial capital of Williamsburg, Virginia. There, he was an original member of the Phi Theta Kappa honor society.³⁸ He graduated from that institution in 1778 and joined the Continental Army during the Revolutionary War. After the war, he moved to Philadelphia, where he studied law under James Wilson. This was the custom of the day: If someone wanted to study the law, he did not go



The nephew of George Washington, Bushrod Washington (1762-1829) was supported and endorsed by John Marshall.

to law school. Instead, he found a job in law, studying under someone who practiced it.

After working with Wilson, Washington was admitted to the Virginia bar and moved back to his home state. Once there, he set up his own law practice in Alexandria. His practice was quite successful, and he became somewhat well known in the state on his own merit. In 1787, Washington successfully ran for the Virginia House of Delegates. Later that same year, he was elected to the Virginia State Convention, which debated the ratification of the new federal constitution. At that convention, Washington voted in favor of adopting the Constitution.

As a person, Bushrod Washington was low key and avoided the limelight. He was an unassuming man who enjoyed a simple lifestyle. It seems that the only thing that Washington knew and did well was the law. A fellow associate justice described him as

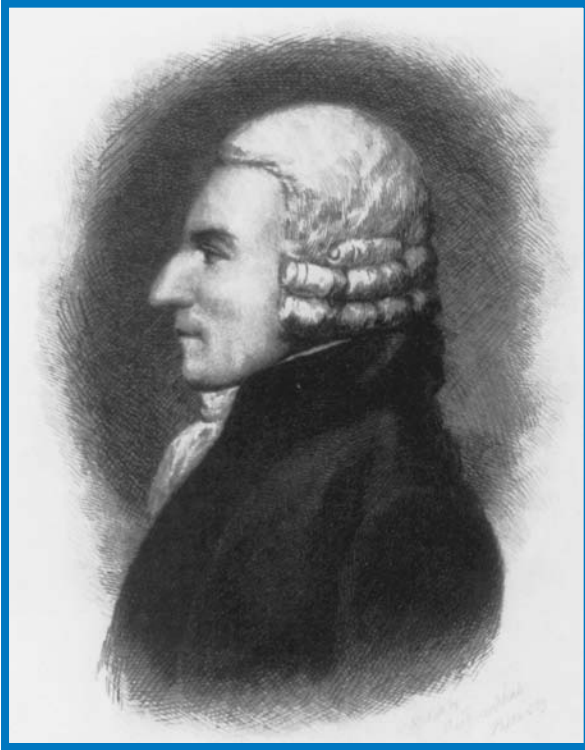
“highly esteemed as a profound lawyer.”³⁹ “Nothing about him indicates greatness,” yet many who served with him and knew him well came to view him as a great legal mind.⁴⁰

Washington and John Marshall were close friends. Washington, who inherited his uncle’s personal papers, encouraged Marshall to write a biography of George Washington. The five-volume work turned out to be more a biography of the Federalist Party than of Washington, and Jefferson believed the book to be an attack on Republican ideals, calling it a “party diatribe” and a “five-volume libel.”⁴¹ The rift between Marshall and Jefferson deepened with the book’s publication.

WILLIAM CUSHING

William Cushing was born on March 1, 1732. At the time of the *Marbury* decision, he was the oldest member of the Court. In 1751, Cushing graduated from Harvard College, and then studied law in Boston under a well-known attorney named Jeremiah Gridley. In 1755, he was admitted to the Massachusetts bar. He practiced law for several years before his appointment to the Massachusetts Superior Court in Falmouth. There, he succeeded his father as superior court justice. Little is known of his work there, although he was recognized as a competent judge who held “accurate and extensive legal knowledge.”⁴²

Even though Cushing held prominent posts, “he was able to remain in the background during the struggles that preceded the Revolution.”⁴³ Perhaps because of his apparent ability to stay out of the political fighting, William Cushing was the only Massachusetts justice to keep a seat on the Supreme Judicial Court when it was reorganized in 1775. Two years later, Cushing was named chief justice of that court. He remained in the position until his appointment to the U.S. Supreme Court in 1789. In addition to his service as Massachusetts’s chief justice, Cushing was a member of the 1779 Convention. This gathering drafted the first written constitution for Massachusetts. Cushing also



William Cushing
(1732–1810)
was George
Washington's first
appointee to the
Supreme Court.

served as the vice president of the state convention that adopted the U.S. Constitution in 1788.

When the new Supreme Court of the United States was organized, Washington named Cushing as the first associate justice. When Chief Justice John Jay temporarily left the bench to negotiate a treaty for the U.S. with Britain in 1794–1795, Cushing performed the duties of chief justice for him. In 1796, when Jay resigned from the post, Washington appointed Cushing as the new chief justice. Because of poor health, he refused the position. Cushing was seen as “a modest man with an elegant manner of speaking.”⁴⁴ Another person described him as “a sensible, modest man, well acquainted with the law, but remarkable for the secrecy of his opinions.”⁴⁵

Cushing had several well-known and influential friends, including George Washington and John Adams, but the justice

never involved himself in politics. He certainly held other interests, including literature and theology. He was married but had no children. His wife usually went with him on circuit, where she read aloud to him as they traveled in their carriage. One author described Cushing as one who “sought his happiness in domestic life; desirous rather to be useful than to be known.”⁴⁶

SAMUEL CHASE

Samuel Chase was born in Maryland in 1741. In 1764, he was elected to the Maryland State Assembly. He held that seat for 20 years. Chase was involved in some of the Stamp Act riots, and the local Annapolis, Maryland, government even criticized him as “a ringleader of mobs” and “foul mouthed.”⁴⁷

Chase also served as member of the Continental Congress, signing the Declaration of Independence. While in Congress, he worked on 21 committees in 1777 and on 30 in 1778.⁴⁸ He served on the Maryland Committee of Correspondence as leaders throughout the colonies attempted to organize resistance to British tyranny. His private law practice earned him the respect and admiration of friend and foe alike.

One historian described Chase as “a born leader of insurrection.”⁴⁹ Judging from his political activities during the 1760s and 1770s, this opinion seems reasonable. There is little doubt that Chase “was a person of strong passions and prejudices.”⁵⁰ He certainly acted on his beliefs and convictions. It seems that if Chase was involved, a controversy surely followed. Such a personality often made political enemies, and Chase had more than his fair share. A political rhyme from the period claimed that

Cursed is thy Father, scum of all that's base
Thy sight is odious and thy name is [Chase].⁵¹

Samuel Chase was a lifelong revolutionary with a fiery temper. He had the ability to find perhaps the most controversial subject in any political situation and take a strong stand. Those

who agreed with him loved him. Those who disagreed with him hated him. Few who knew him had no opinion of him.

President George Washington named Chase to the Court in 1796. Washington wanted Chase to be his attorney general, the nation's lawyer, but he evidently changed his mind and submitted Chase's name to the U.S. Senate for confirmation to the Court on January 26, 1796. Chase was unanimously confirmed the next day. Chase proved himself to be an able and competent judge. His decisions were detailed, well thought out, and nicely written. They were rarely overturned, which means he usually decided cases in the way that the higher courts believed cases should be decided.

Still, Samuel Chase made few friends with his behavior during some of his trials. It was perhaps his role as judge in enforcing the Sedition Act of 1798 that created the most animosity. The Sedition Act allowed for prosecution of those who were outspoken critics of the Adams administration's policies toward France. Chase served as judge for several of these trials. He angered Republicans with "his overbearing manner, his immoderate language, and his tone of voice" in the courtroom.⁵² Mostly, Chase was criticized for his openly political attacks and decisions. That is, he appeared to be deciding some cases—those dealing with the Sedition Act—in a political way. Such conduct did not speak well for what was supposed to be an independent and nonpolitical judiciary.

A somewhat different view is offered by another Supreme Court justice, Joseph Story. Story knew Chase but served on the Court after Chase's death. Story wrote that Chase had "good humor" and that he "amuses you by his" funny stories.⁵³ His fellow justice also believed that Chase was intimidating at first, but once understood, Chase was an extremely likeable person. "I like him hugely," Story admitted to a friend.⁵⁴ Marshall grew to like Chase, as well, believing him to have a sound legal mind.

Samuel Chase was apparently a well-qualified and able judge. He was also a somewhat rowdy and divisive figure who

often found himself at the center of controversy. He was both professionally competent and personally disruptive. Chase was a political figure serving in a nonpolitical appointed judicial position. He was, first and foremost, a loyal and dedicated Federalist.

THE MARSHALL COURT

Each of the justices on the Marshall Court was a veteran of the Revolutionary War. Each was well-known in his hometown and or state. Each man had already served his state or the federal government before being appointed to the Court. Each, with the exception of Marshall, had previous experience as a judge. Each of these men was a leader, taken from the leadership class and appointed to exercise leadership on the Supreme Court.

More important, these men shared a distinct political philosophy, sometimes described as the “Federalism of President Washington.”⁵⁵ This federalism was an appreciation of the national government. Such men believed that government can and ought to be good to its citizens. They believed in their government. They dedicated their lives to public service in the hope that the new government would flourish and grow. Many of their decisions helped define and expand the powers of the federal government. Often, the Court compromised in order to reach unanimous or near-unanimous decisions. The Marshall Court, through its opinions, proved to be more Federalist than Republican.



7 The Federal Court System, 1789–1803

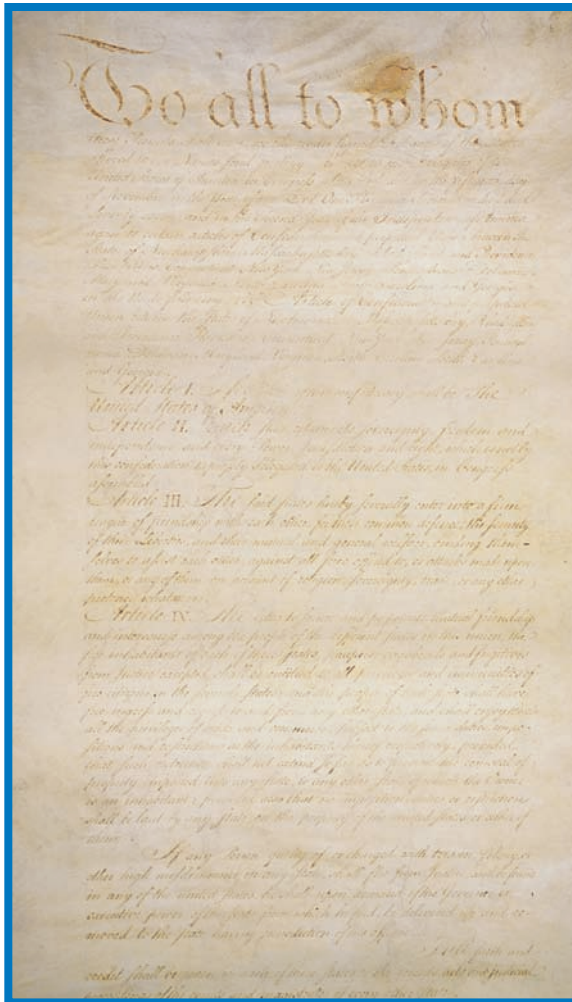
In order to place *Marbury v. Madison* in proper context, it is important to understand the federal court system in the early republic. The American judiciary, and indeed the entire federal government in the late eighteenth and early nineteenth centuries, did not include the large bureaucracy it has today. The federal government simply did not have the means by which to enforce the law at the local level. The only group of federal government officials that could carry out or enforce the policies at the local level was judges. These judges held court at various locations throughout the United States.

There was only a single federal court in the Articles of Confederation government. That court was the Court of Appeals in

Admiralty Cases, which dealt with cases that stemmed from state trials. Each of these cases had to do with British ships seized during the Revolutionary War by American privateers, or legalized pirates. The Continental Congress had lacked the money necessary to build and maintain an adequate navy. Thus, Congress legalized pirating of British ships to further the cause of independence. After the war, many of these British ship owners sued for compensation. This was the only kind of case the federal court system heard under the Articles of Confederation government. All other legal cases, regardless of their nature, originated and ended in the same place: state courts. There was no federal court, so the resulting inconsistencies of and dissatisfaction with the state court system is hardly surprising.

Lacking a functioning federal court system, Congress could do little to enforce national law. Instead, it had to rely on the state judiciaries to implement laws passed by the federal legislature. State and national laws did not always agree, and state judges often ruled in favor of the state law. For example, the Treaty of Paris of 1783, which ended the war with Britain, guaranteed timely collection of money owed to British collectors by American citizens. State courts routinely thwarted efforts of British creditors to reclaim their money. Without a national judiciary to overrule state court decisions, the British creditors had no legal recourse.

Some Americans looked on the Confederation judiciary with disfavor for at least two distinct reasons: First, some wanted to reform the system simply because they believed that government ought to protect everyone's rights. These individuals then wanted a stronger national government on the principle that a stronger government could better protect individual rights. Second, others supported a stronger national government because they supported reform or enforcement of specific national policies, such as tariffs and commercial agreements.



The Articles of Confederation, the United States's first constitution, were adopted by the Continental Congress on November 15, 1777.

The delegates to the 1787 Constitutional Convention forged a compromise when they created the new federal judiciary. Some delegates wanted local authority to take priority over federal law. Others wanted to increase the effectiveness of the national judiciary. The new constitution created a Supreme Court and allowed individuals to appeal to it, from either the state or subordinate federal courts. The convention decided to allow the Supreme Court to “possess only limited power to enforce national law, since many litigants will be unable to appeal cases

to it and even when appeals are taken, lower courts will not always enforce the Supreme Court's mandates."⁵⁶ Thus, the lower federal courts "are essential to comprehensive enforcement of national law."⁵⁷ The compromise came when the nature of the lower federal courts was not spelled out in the Constitution. Instead, Congress would spell out the details of the lower courts. Thus, the U.S. Constitution created a Supreme Court but allowed Congress to dictate to what extent national law could and would be enforced in the federal courts.

The compromise did not ease the concerns of those opposed to the new constitution. The so-called Anti-federalists were concerned that the new federal courts had too much power. Congress had the power to establish these courts as its members saw fit and so it also had the power to "create federal courts in which judges determined law and fact."⁵⁸ Up to this time, the power to determine both law and fact rested with the state judiciaries and so the state courts had always enjoyed the ability to overturn federal policy. The judicial compromise at the Constitutional Convention undermined the states' power to cancel out federal laws and actions. In this light, it is clear why the Anti-federalists opposed ratification: They saw the U.S. Constitution as a real and dangerous threat to their liberties. The Constitution shifted the protection of local rights and liberties from the state court systems to the federal judiciary. This shift revealed tensions that did not evaporate with the adoption of the Constitution.

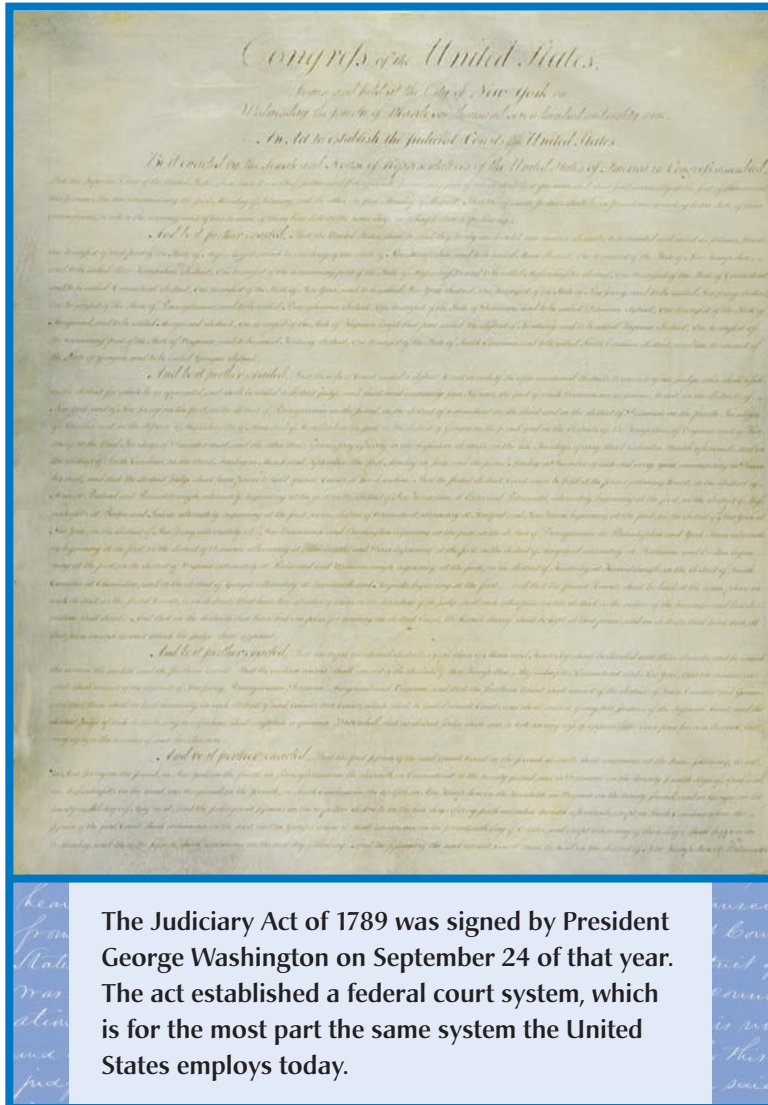
The ratification fight further revealed these tensions. Included in the Bill of Rights are protections for the jury system, which address the concerns that the new federal court system might supersede the state courts. The Constitution clearly allows for this, so the Bill of Rights guarantees that certain individual rights—such as rights to a public trial and a trial by jury—cannot be overlooked. Despite these guarantees, the Constitution and the Bill of Rights allowed for a strong federal court system that could reverse state court juries' actions

against national policy and law. Thus, the Constitution sought to close the gap between national law and state enforcement of national law.

Under Article 3 of the U.S. Constitution, Congress has the authority to “ordain and establish” the federal courts that operate underneath the Supreme Court. The first session of Congress addressed the needs of a federal judiciary by setting up a court system; the Judiciary Act of 1789 established its hierarchy, with the Supreme Court at the top. Included in the act was the appointment of six justices, one of whom was to be the chief justice. Beneath the Supreme Court were three circuit courts. At the base of the federal judiciary were 15 district courts, one for each state and the two territories (Ohio and Kentucky).

In many respects, the Judiciary Act of 1789 further reflects the friction between those who supported the rights of state courts and those who favored the power of federal courts. The act required two Supreme Court justices and one district court judge to sit on each circuit court. Depending on the rotation cycle, each justice of the Supreme Court might be required to hold court in five different locations in a single year! Thus, the 1789 Judiciary Act ensured that federal courts could not meet as often as state courts. This meant that the state judiciaries served as the primary location for establishing law and fact. The federal judiciary was simply too small to keep pace with the larger state court systems that met more regularly.

Because the circuit courts did not have full-time judges, each of the district judges served in the circuit court whenever it convened in his state. Two Supreme Court justices also served, making a panel of three judges for each circuit court. The Supreme Court justices did not necessarily live in the state of the circuit court and so were forced to ride the circuit. The awkwardness of this system was soon realized. Southern justices were forced to travel nearly 2,000 miles twice a year just to hold court on the circuit, often travelling for two months in order to convene a court session as short as two



weeks.⁵⁹ In 1791, the Court moved to Philadelphia with the rest of the federal government. This new location was more centrally located and helped ease the burden. Congress also helped remedy the situation and made improvements to the judicial system in 1792. These changes allowed justices to take individual turns on the circuit rather than forcing them to travel in pairs.

When Congress passed the Judiciary Act of 1801, the federal court system had three circuit courts. There are 12 today, including one for Washington, DC. The three circuits were divided geographically into the Southern Circuit, the Eastern Circuit, and the Middle Circuit. The Southern Circuit included North and South Carolina and Georgia. The Middle Circuit comprised Delaware, Maryland, New Jersey, Pennsylvania, and Virginia. Massachusetts, Connecticut, Rhode Island, New York, New Hampshire, and Vermont made up the Eastern Circuit.

The Judiciary Act of 1801 had good and bad elements. The law continued some of the reforms already offered by Congress, and also some much-needed reforms, such as the establishment of permanent circuit courts. This offered relief to the justices



THE SUPREME COURT BUILDING

In the early years of the republic, the Supreme Court suffered from a lack of respect. Nothing symbolized this more clearly than the lack of a permanent home for the Court. When the national government was located in New York, the Court met in the Merchants Exchange Building in New York City. In 1790, the capital was relocated to Philadelphia. The Court moved with the rest of the national government, holding its session in Independence Hall (the State House). Later, the Court met in City Hall, hardly an appropriate venue for the highest court in the country.

In 1800, Washington, DC, became the new national capital. Once again, the Court moved with the national government. Unfortunately, Congress did not appropriate any funds to construct a building for the Supreme Court. The Court was forced to borrow a room in the Capitol, where it even held sessions in a basement room for a time. After the British burned the Capitol during the War of 1812, the Court met in a private residence.

who often ended up sitting in judgment twice on some cases—once on the circuit court and again on the Supreme Court. This possible conflict of interests was not desirable.

The Judiciary Act of 1801 also introduced reforms designed to alter the balance of power between the state and federal judiciaries. Federal courts could now decide all cases involving federal law, and the minimum monetary threshold to demand a hearing in a federal court was lowered from \$500 to \$100. Thus, the 1801 act increased the likelihood that a citizen might be called into a federal court. The increased number of circuit courts and permanent judges improved the efficiency of this system. It was those features of efficiency, coupled with the increased power of the federal judiciary, that most concerned the opponents of the 1801 Judiciary Act.

The Court returned to the Capitol in 1819, convening in what is now called the “Old Supreme Court Chamber.” It met there until 1860, when it moved to another room in the Capitol, the “Old Senate Chamber.” The Court met in the Old Senate Chamber until it received a building of its own 75 years later.

In 1929, former President and sitting Chief Justice William Howard Taft convinced Congress that the Court needed its own building. Construction began three years later. At the laying of the cornerstone of the new Supreme Court Building, Chief Justice Charles Evans Hughes declared that “the Republic endures and this is the symbol of its faith.”⁸ The Court finally moved into its permanent home in 1935. The Supreme Court is indeed an equal branch in our government.

⁸<http://www.supremecourtus.gov/about/courtbuilding.pdf>.

Despite the weaknesses and concerns, the 1801 act contained some needed reform. Unfortunately, the timing did not help the cause of judicial reform. The bill was introduced and passed after John Adams and the Federalists had already lost the election to the Republicans. To most observers, this law did not look like reform, but rather like guaranteed government jobs for a defeated political party.

The Judiciary Act of 1801 was also a deliberate attempt to place as many Federalists as possible in the court system. Many of these positions were lifetime appointments, so Republicans were understandably upset. To make matters worse, Adams and his allies in the outgoing Senate did their best to fill every new position before Jefferson was sworn in as president.

If there was any question that the Federalist Congress desired to pack the courts, another provision in the 1801 act removed all doubt. The act reduced the number of Supreme Court justices from six to five. In essence, this meant that the Court would have to lose two members before Jefferson could name a single justice. The Republicans understandably viewed this as an attempt to undercut Jefferson's electoral victory.

Despite the real reforms of the Judiciary Act of 1801, the new Republican administration was not pleased with the legislation. As far as Jefferson and the Republicans were concerned, the federal courts were nothing more than a safe place for Federalist ideas and philosophy to hide. Those same courts now held a large number of Federalists appointed at the last moment. Because the courts decided the meaning of laws, Jefferson did not take this lightly. He believed that Federalist judges would continually erode the democratic gains that he and his party had won at the ballot box.

The Republicans were distressed over the Federalist attempt to pack the courts. Jefferson expressed his concern in a letter to a friend: "They have retired into the judiciary as a stronghold. . . . There the remains of Federalism are to be preserved and fed from the Treasury, and from that battery all the works

of Republicanism are to be beaten down and destroyed.”⁶⁰ Jefferson worried that the Federalists could safely stay within the judiciary with virtually no chance of removal. All the while, the Federalist judges could undermine any Republican actions in the Executive and Legislative branches.

After the Republicans took office in March 1801, the already tense political situation became more heated. The Republicans were determined to undermine the gains the Federalist lame-duck Congress had made. To this end, the Republican-controlled Congress made plans to repeal the 1801 Judiciary Act.

The repeal of the Judiciary Act of 1801 barely passed the Senate in February 1802. In the end, the Repeal Act—the bill to repeal the 1801 law—passed by a single vote (16 to 15). The House of Representatives then debated the bill for a month. When the House finally voted, every Republican voted for the repeal and every Federalist voted against it.

The repeal allowed for a potential constitutional crisis. This possible predicament stemmed from the fact that Congress abolished judgeships. The Constitution called for independent judges appointed to lifetime positions, and the repeal certainly seemed to deny the newly appointed judges their constitutional rights. Although both sides were quick to voice their approval or opposition, they offered no new arguments. They simply restated the positions they had taken during the course of the debate in the House and Senate. The Republican measure was passed, and the Judiciary Act of 1801 was abolished.

Some feared that the Repeal Act was not the end but rather the beginning of a political firestorm. There was talk that now Congress might consider repealing the 1789 law that established the Supreme Court. One Federalist wrote that the repeal was predictable from individuals “who have always been hostile to the Constitution . . . a work whose adoption they opposed, and whose execution they have constantly counteracted.”⁶¹ The writer optimistically added that “I do not imagine they will stop here, they will proceed in their mad & wicked career.”⁶²

Despite the political backlash by even some within their own party over the Repeal Act, the Republican leadership took another step in limiting the power of the judiciary. The Republicans feared that the Supreme Court might declare the Repeal Act unconstitutional, but they did not dare repeal the 1789 act. Instead, they did the next best thing: They eliminated the June session of the Supreme Court. Thus, the Court was not to meet again until February 1803 and the judges who lost their commissions as a result of the elimination of their seats could not seek legal recourse by filing a lawsuit in the Supreme Court—at least not for another year.

This action was by no means a popular one. Federalists claimed that it was a blatant attempt to intimidate the judiciary. Even James Monroe, a loyal Republican, felt that abolishing the June Court session “was too extreme a measure.”⁶³ He also feared that it showed a reluctance to even allow the Court to



The fifth U.S. president, James Monroe, (1758–1831) delivered the famous message to Congress now known as the Monroe Doctrine. Monroe stated that European nations should cease from colonizing nations in the Americas.

determine the appropriateness of the Repeal Act. Also, new questions concerning the judiciary arose. Most notably, what was to happen to all the new judges named and confirmed to lifetime appointments now that the Repeal Act eliminated their positions? In the end, the Supreme Court upheld the Repeal Act, despite legal challenges to its constitutionality.

The Repeal Act posed another problem for the Supreme Court justices. Prior to the 1801 Judiciary Act, Supreme Court justices rode the circuit, which meant that they each served as the judge for the various circuit courts. The circuit courts were the federal courts below the Supreme Court. Chief Justice John Marshall decided to discuss the matter with his fellow justices via letters. With a primitive mail system, this discussion took place over many weeks. In the end, the majority of the justices believed that they should submit to the Congress and ride the circuit. Marshall and the justices avoided a constitutional crisis by agreeing to abide by the Repeal Act.

One of the so-called “midnight appointments” was William Marbury. He had been named justice of the peace for Washington, DC. The Senate approved his appointment. President Adams signed the necessary paperwork and sent it to his secretary of state, John Marshall, late in the evening on the March 3, 1801, the last night of the Adams presidency. Once Marbury’s commission arrived at the State Department, it was marked with the seal and placed with other commissions ready for delivery. Several commissions, including Marbury’s, were not delivered that night. Perhaps Marshall simply forgot to send it, or maybe there were too many other details to attend to. Whatever the reason, the commission was not delivered to Marbury. When Marbury realized that he was not going to get it, he decided to sue the new secretary of state, James Madison. The resulting court battle became the landmark case *Marbury v. Madison*, and the legal principles laid out in that decision became the basis for modern constitutional law in America.



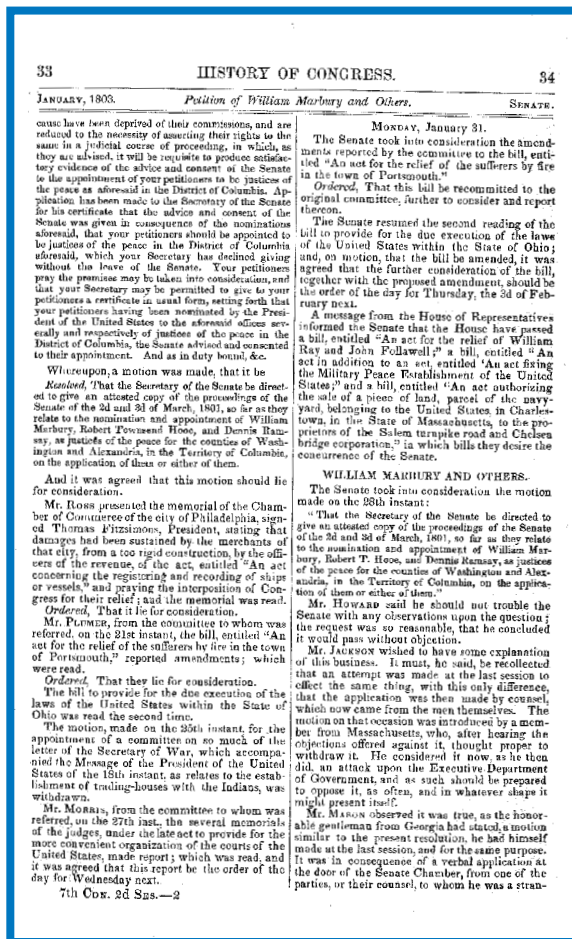
8

The Trial of *Marbury v.* *Madison*

At the time of *Marbury v. Madison*, there was little to suggest that the case was anything but trivial. The Court was called into session on Monday, February 7, 1803. Chief Justice Marshall was not even there. Such tardiness was not uncommon. Travel was not as reliable or predictable as today and often resulted in delays. The actual trial for *Marbury v. Madison* did not begin until later that week, February 10, when the two sides gave their opening arguments, and still not all of the justices had arrived. Justice William Paterson arrived on February 11. Justice Alfred Moore was unable to attend until February 12. Because of illness, Justice William Cushing did not attend the trial at all. Regardless of the little attention the case generated

during the proceedings, the *Marbury* decision would leave its mark on American law.

President Jefferson and Secretary of State James Madison did not seem very interested in the case. They were occupied with the details of the ongoing American attempt to purchase the Louisiana Territory from France. Madison, the named defendant in the case, did not even attend the hearings. The fact that Marshall did not make any attempt to force him to appear before the court indicates that the chief justice wanted to avoid a confrontation between the judicial and Executive Branches. Madison did not even hire an attorney to represent himself.



This page from the Annals of Congress records the petition in the *Marbury v. Madison* case. The Annals of Congress archives the first congress in 1789 through the first session of the eighteenth congress in 1824.

Charles Lee represented Marbury in the case. Lee regularly argued cases before the Supreme Court and had served as attorney general of the United States in both the Washington and Adams administrations. He had been offered, but had turned down, one of the midnight appointments to the new federal circuit courts. A distant relative of Chief Justice John Marshall, the two were close friends. William Marbury had hired a capable and well-known attorney to argue his case before the Supreme Court.

Before filing a lawsuit, Lee approached Madison in an attempt to get the commission for his client. When Madison refused, Marbury and Lee filed suit. Although lawsuits were not uncommon, the path of *Marbury v. Madison* to the Supreme Court is somewhat unusual. Charles Lee cited the constitutional clause of “original jurisdiction” when he filed the lawsuit, meaning that the Supreme Court would be the first court to hear the case. Usually, the Supreme Court hears appeals of cases already decided by lower state and federal courts. In *Marbury v. Madison*, however, the nation’s highest court heard the case and acted as a trial court, not an appellate court.

To Lee, the case was simplified into two main points: First, Marbury was legally entitled to the commission that appointed him justice of the peace for Washington, DC. Because the secretary of state refused to give Marbury something that was lawfully his, some sort of a legal remedy must be applied to resolve the situation. Second, Lee believed that in fact a legal remedy was available to his client. That remedy was the writ of mandamus. Lee cared little that the power to issue said writs was not given to the Court in the Constitution but rather in the Judiciary Act of 1789. Amazingly, Attorney General Levi Lincoln did not argue against the constitutionality of the writ. Indeed, the defense hardly offered much of a case at all.

Lee needed to prove two key aspects of the case in order to win: First, he had to demonstrate that the commissions intended for Marbury and the other justices were legally completed

by the president and secretary of state. If the commissions were legal, then they were also legally binding. If they were legally binding, then Marbury needed some form of remedy to his situation. Next, Lee had to show that the Court had the authority to order Madison to deliver the commission to Marbury.

Charles Lee set about establishing that President Adams and Secretary of State Marshall had completed the judicial commissions for Marbury and the others. He began the plaintiff's case by maintaining that Marbury's commission was legitimate. Lee also insisted that Marbury had a right to receive his commission.

Lee called in two witnesses, Jacob Wagner and Daniel Brent, clerks for the State Department. Both claimed executive privilege, arguing that they could not release any information about the State Department. Lee countered by pointing out that, although the men worked as presidential agents, they were also public servants and should have to give testimony. Chief Justice Marshall agreed with Lee, and the two were forced to testify. Wagner and Brent both confirmed that the completed commissions were in the State Department on the last night of John Adams's presidency—March 3, 1801. Neither knew what had happened to the commissions, however.

Next, Lee tried to show that the Supreme Court had the power to issue Madison an order that required him to deliver the commissions. Marbury's attorney reminded the Court that the Judiciary Act of 1789 authorized the Supreme Court to issue writs of mandamus to government officials, including those in the Executive Branch.

Lee's final arguments rested on a statement signed by James Marshall, brother of the chief justice. The letter stated that he had seen the actual commissions in the Department of State. James Marshall further stated that he had tried to deliver the commissions. After failing to deliver them, he then returned the commissions to the secretary of state's office.

Lee wrapped up his closing arguments by citing several English cases, emphasizing the use of a writ of mandamus



WASHINGTON, D.C., IN 1801

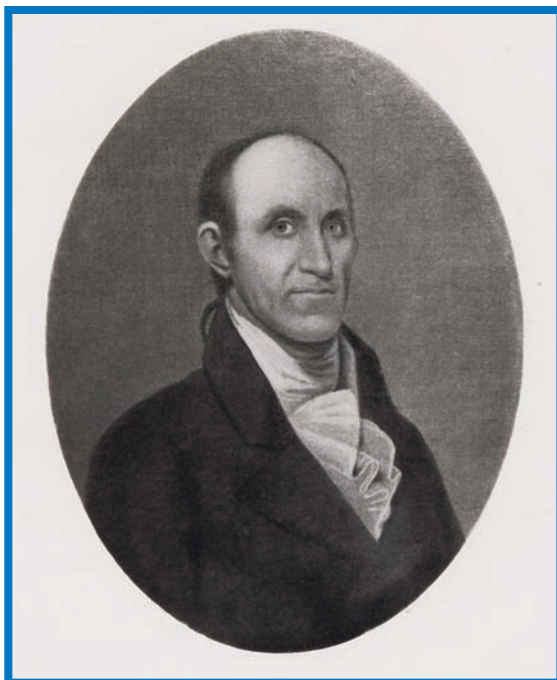
Washington, D.C., in 1801 was nothing like the city it is today. The federal government had been located in New York from 1789 to 1790. Then, the federal government moved to Philadelphia. John Adams was the first president to occupy the Executive Mansion when the federal government moved to Washington in 1800.

The city, located on the Potomac River between Maryland and Virginia, was based on the design of Pierre Charles L'Enfant, a French architect who fought for American independence as a volunteer in the Continental Army. When Marshall convened the first Supreme Court session there, Washington, D.C., was in the early stages of development. Eventually, the city became known for its long avenues, all originating from a central source and linked near prominent monuments and significant buildings. In 1801, however, Washington had few government buildings, no large bureaucracy, and only a small number of permanent residents.

The new capital was anything but beautiful and thriving. The city was located in the midst of a swamp. Running diagonally across the city was "a streak of mire" that Congress named Pennsylvania Avenue.* The Executive Mansion was still under construction, but it already showed signs of poor workmanship. As late as 1850, Washington was as noted for its muddy streets as it was for being the seat of American power.

To illustrate how insignificant the capital city was through much of the early nineteenth century, John Marshall never moved to Washington, D.C. In part, this was because of the small amount of time the Court spent there. The Court's sessions were usually about six weeks long. Thus, the chief justice rented a room in one of the local boardinghouses, as did most of the other justices.

*Edward S. Corwin, *John Marshall and the Constitution*, p. 53.



Charles Lee (1758–1815) served as U.S. attorney general prior to representing Marbury in his Supreme Court case. Although Thomas Jefferson later attempted to appoint him as a justice to the Court, Lee declined the offer.

when “no other adequate, specific, legal remedy” exists for the plaintiff.⁶⁴ Lee then closed his case by again reminding the Court that Congress had authorized the Court to issue writs of mandamus. Therefore, the Court needed to offer this remedy to Marbury, who had been wronged in this case.

To outside observers, it appeared that Lee had made a strong case in favor of his client. To Madison and Jefferson, the case was simply a matter of separation of powers. In their eyes, the Executive Branch held the power of judicial appointment, subject, of course, to Senate approval. As such, they decided to withhold an appointment that initially came from the Executive Branch. Madison did not see this as an inconsistency. Instead, he viewed it as an open and closed matter involving the Executive Branch and only the Executive Branch. Marbury disagreed with Madison’s view, and the case was destined to be decided in court.

In addition to the Supreme Court's acting as a trial court in this case, the proceedings had other peculiar features. The most prominent of them was that this was the first significant case in which issues related to executive privilege were raised. In essence, the issue facing the Court included whether the Executive Branch could legitimately claim to be above the law in certain instances. This issue had its roots in the details of the case itself.

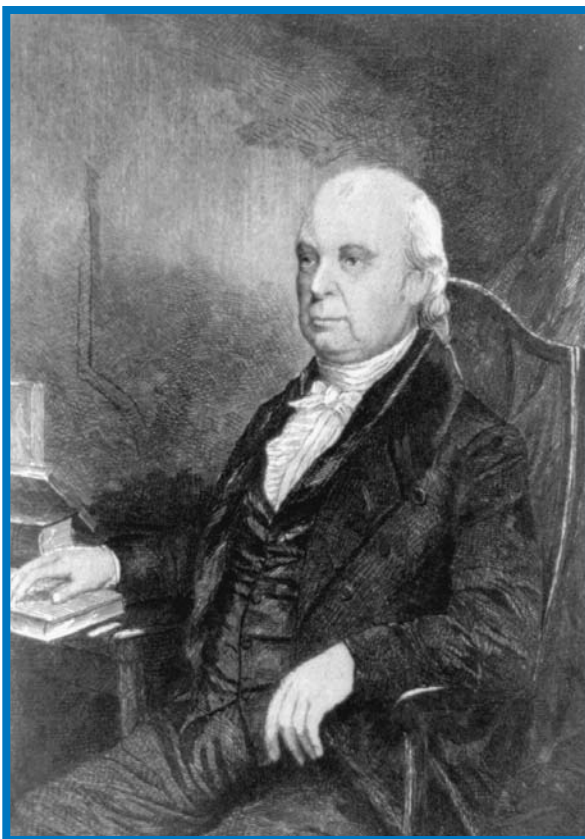
The State Department, headed by Madison, refused to deliver the signed and sealed commissions to the appointees. Perhaps most troubling to some was the apparent confrontational attitude Madison and his subordinates took toward Marbury and his claims. The State Department claimed that "they had no obligation to deliver" the commissions.⁶⁵ They further argued that "by virtue of their status in the executive department, they were privileged to refuse to testify" should they be called before the Court.⁶⁶ Such a position clearly opened the door for the executive to claim to be above the law in a variety of matters. This possible threat was very real and has reappeared in American constitutional law many times since *Marbury*.

The issue of executive privilege became more complex because Attorney General Levi Lincoln had been the acting secretary of state when the commissions disappeared. Lincoln represented the government before the Court and faced being placed on the stand as a witness, and he expressed his reluctance to testify in matters that occurred while he acted under orders from the Executive Branch. Charles Lee noted that, in an executive position below the president, there were two types of duties. In one capacity, the official was simply acting as a representative of the president and that official's duty was only to the president. In such an instance, the official should not be required to answer to anyone other than the president. In another capacity, the official was also a public servant and was therefore responsible to the people. Thus, even Charles

Lee recognized that in some instances it was not reasonable to expect Lincoln to answer certain questions, especially if the result was to embarrass the president.

As the Court and attorneys wrestled through these issues, Marshall and Lincoln both appeared to realize what was at stake:

It was apparent from the interchange between Marshall and Lincoln that each was doing his utmost to prevent the issue from escalating into a full-blown confrontation between the executive branch and the Court. Lincoln deferred to the Court's authority. Marshall made it plain that the court would respect executive privilege.⁶⁷



Levi Lincoln (1749–1820) was appointed U.S. attorney general by Thomas Jefferson and was later governor of Massachusetts.

Amazingly, Lincoln offered absolutely no defense. Chief Justice Marshall asked Lincoln for an explanation. The attorney general defended his actions by pointing out that Madison had not given him any instructions; therefore, Lincoln presented no witnesses or arguments in Madison's defense.

Marshall was in a difficult position. Marbury insisted on receiving his commission. Jefferson was the reason Marbury did not receive his appointment. With political tensions so high, the last thing the Court needed was to challenge the authority of the president. To make matters worse, some from Jefferson's party wanted to make sure that the Court gave a favorable ruling. "There were open threats by the Republicans to impeach Marshall himself if he were to decide in favor of Marbury."⁶⁸ The independence of the judiciary was at risk. With so much at stake, Marshall led the Court through the case by demonstrating a remarkable grasp of how to balance the law with the political realities facing the Court. Marshall and the Supreme Court had to make a decision, a decision that would affect the judiciary almost immediately and for years to come.



9

The Decision

After hearing the arguments, the Court deliberated. The many political and constitutional issues of the case now lay before the justices. The Marshall Court seemingly faced two poor choices: It could issue the writ of mandamus for Marbury or it could deny the writ. Neither choice seemed acceptable to Marshall or the other justices. Ordering the writ would not necessarily produce a desirable outcome. Such a writ would demand that Madison deliver the commission. If Jefferson and his secretary of state decided to ignore the writ, which seemed likely, the Court would suffer from weakened authority. The Court had no way to enforce any writ, so the result of an ignored court order would be an emboldened

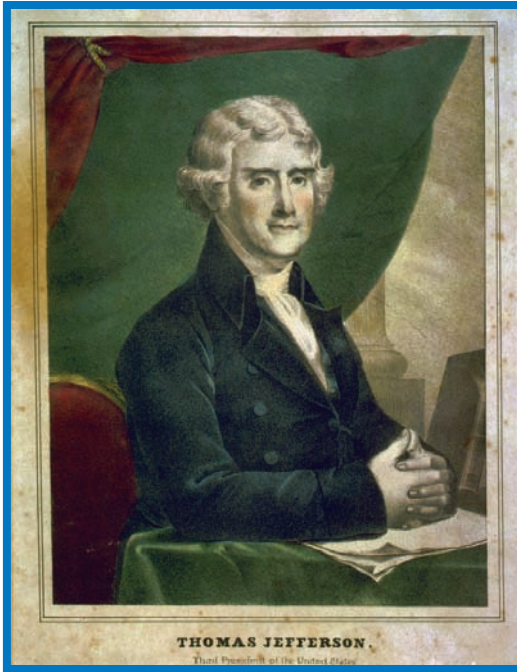
president and a weakened judiciary. The Judicial Branch already suffered from a less-than-equal status with the other two branches of government; if Marshall and his colleagues overstepped their bounds by issuing a writ that could easily be ignored, then ultimately the Court would lose what little stature it enjoyed.

Also, ordering the writ was probably a poor choice given the political climate. The Republican-controlled Congress had already repealed the Judiciary Act of 1801 and postponed the 1802 Supreme Court session. It seems likely that issuing a court order to the Executive Branch would have resulted in some sort of political payback. The Republicans had already exacted revenge for previous Federalist actions. The only protection that the Federalists seemingly had was the federal court system. By the time the Court heard arguments for *Marbury*, Republicans in Congress had already impeached John Pickering, a Federalist judge who served on a federal court. It was no secret in Washington that Republicans intended to pursue impeachment proceedings against Associate Justice Samuel Chase. Thus, the political climate into which *Marbury* thrust Marshall and the Court was a risky environment that threatened the independence of the federal court system.

Instead of issuing the writ, the justices could simply deny Marbury's petition for a writ of mandamus. If Marshall and the Court decided in favor of Madison, however, Jefferson and the Republicans could claim a significant political victory. Such a decision might also give the appearance that the Court feared the Executive Branch.

The decision that Marshall and the Court delivered gave a little to both sides. In the end, neither side was completely happy, but the independence of the Court was saved. More important, the stature of the Court and its role as an equal among the three branches of government was secured.

Marshall and the other justices essentially saw the case reduced to two main points, which he posed as legal questions



Thomas Jefferson's reaction to the Marbury verdict was unfavorable: "To consider the judges as the ultimate arbiters of all constitutional questions [is] a very dangerous doctrine indeed. . . . The Constitution has erected no such single tribunal. . . . It has more wisely made all the departments co-equal and co-sovereign within themselves."

for the Court to decide. The questions are as important today as they were in 1803:

1. Is Marbury entitled to his commission?
2. If his rights were violated, is there a legal remedy available to him?
3. Is a writ of mandamus issued from this court the proper remedy?

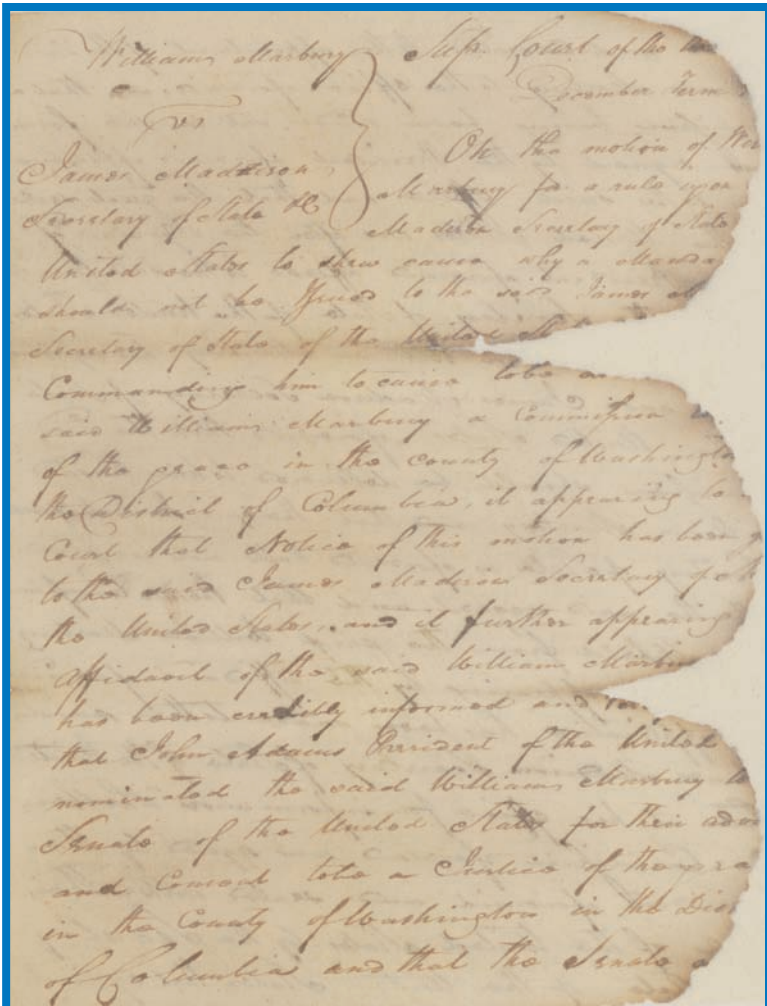
In response to the first legal question, Marshall answered, "Yes." The appointment had been made by the president and confirmed by the Senate. The paperwork had been signed and affixed with the government seal. The only part of the process that failed to be completed was the actual delivery of the documents to Marbury. Marshall stated that "when a commission has been signed by the president, the appointment is made; and that the commission is complete, when the seal of the United States has been affixed to it by the secretary of state."⁶⁹ Further,

to withhold the commission from Marbury was a violation of his “vested legal right” to the commission.⁷⁰ Thus, Marbury did indeed have a right to the commission that appointed him justice of the peace. Moreover, Jefferson and Madison were violating Marbury’s rights by refusing to deliver his commission to him.

Marshall and the Court also found in favor of Marbury in the second question: Yes, there was a legal remedy available to Marbury. This is a little redundant because the decision already acknowledged that Marbury’s rights were violated. Marshall declared that the “very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.”⁷¹ Thus, the Court believed that the Executive Branch had wronged Marbury and that it was proper for Marbury to seek some sort of compensation. Because the Constitution protects individual rights and liberties by establishing a government, “the individual who considers himself injured, has a right to resort to the laws of his country for a remedy.”⁷² The U.S. government and court system were the only legal remedy available to Marbury. After all, it was an agent of the government who violated his rights.

The only question left to the Court was whether the situation could be remedied by the Supreme Court issuing a writ of mandamus. Marshall said that the proposed remedy rested on two issues: First, the nature of the writ had to be appropriate to the situation. Second, the Supreme Court had to hold the power to issue the writ.

A writ of mandamus is simply a court order that means “we order.” In this case, such a writ would have been issued to James Madison. The writ would have ordered Madison to deliver the commission. Given the nature of the writ of mandamus, Marshall asserted that this “is a plain case for a mandamus, either to deliver the commission, or a copy of it from the record.”⁷³ Of course, the Supreme Court can issue orders: It is a court and



This document is the decision in the *Marbury v. Madison* case, establishing the power of the judiciary to determine the constitutionality of the actions of the other government branches.

courts issue orders on a routine basis. Further, “the Court then held the writ of mandamus to be an appropriate legal remedy for resolving Marbury’s dilemma.”⁷⁴

The more important issue centered on whether the Supreme Court had the power to issue this specific kind of writ. In short,

this raised another question that had to be answered: Is Section 13 of the Judiciary Act of 1789, in which Congress authorizes the Court to issue writs of mandamus, constitutional? Thus, the Court examined its own power to issue writs of mandamus. The Constitution does not give this power to the Supreme Court. The first Congress extended this power to the Court when it organized the federal judiciary in 1789. Specifically, Article 13 of that legislative act allowed the Supreme Court to issue such writs. Marshall quoted from the Constitution, stating that the document “vests the whole judicial power of the United States in one Supreme Court.”⁷⁵ Thus, the Supreme Court had powers given to it by the Constitution. Marshall and the Court looked closely at this. By their reasoning, this part of the Judiciary Act of 1789 implied that Congress held authority over the Court: If Congress could add powers to the Court, then it stood to reason that Congress could also take away or limit powers of the Court. The Constitution does not grant this authority, and so the Marshall Court disputed the underlying principle that Congress could grant powers to the Court, thus nullifying part of the Judiciary Act of 1789.

In Marshall’s words, “It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule.”⁷⁶ If that law “be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.”⁷⁷ Thus, the judiciary had the final say on whether a law was constitutional. Marshall and the Supreme Court declared that the Court would decide what the constitution meant or said on particular matters.

In *Marbury v. Madison*, the Supreme Court ruled “that an act of the legislature, repugnant to the constitution, is void.”⁷⁸

Because the U.S. Constitution did not specifically give Congress the power to grant or remove powers from the Supreme Court, provisions in the Judiciary Act of 1789 were in violation of the Constitution and appropriate sections of that congressional act were unconstitutional. Marshall affirmed the supremacy of the Constitution over all three branches of government, claiming that “the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.”⁷⁹ In other words, the Constitution was absolute and had the final say. If an executive action or congressional act violated the Constitution, the Constitution would prevail. Otherwise, there was no need or purpose for a written constitution.

Marshall’s reasoning is sound. If Congress can write any law it chooses, without any regard for what the Constitution says, then why have a constitution? Such an approach would make Congress supreme, something the Constitution does not do. Under such a system, Congress could do exactly what the U.S. Constitution prohibits it to do, but the courts would have to allow it. That is, “the courts must close their eyes on the constitution, and see only the law.”⁸⁰ Such a view “would be giving to the legislature a practical and real omnipotence. . . .”⁸¹ If that were the case, then any written constitution would be meaningless. Because the states all had their own written constitutions, this legal reasoning was persuasive.

Twelve days after the proceedings ended, the decision was handed down. Marshall read the unanimous decision from the bench in open court. The reading took nearly four hours. On the surface, it appeared that the Court lost ground in a fight with the other two branches of government. After all, the Court’s own decision denied the judiciary the power to issue certain orders. Marbury, whom the Court admitted had been wronged by the Executive Branch, could expect to receive no

legal recourse for the wrong done to him. It appeared that the Supreme Court was destined to continue its role as second-class branch of government, beneath the dignity and power of the Executive and Legislative branches. The reality of *Marbury* is deeper than initial appearances, however. It is true that the Court lost the power to issue writs of mandamus, but it did so by asserting a much greater power, that of judicial review.

For Marshall, the case presented the opportunity to address one of the areas the Constitution did not specifically address. That is, when two or more parties disagree over the meaning of a law, who has the final say? Who is it that determines whether a law should be a law? The decision handed down in *Marbury v. Madison* allowed Marshall to answer these questions. His answers did not please everyone.

Reaction to the decision was mixed. Federalists were disappointed that the Court did not order the Executive Branch to remedy the situation. Republicans were irritated that the Court assumed the authority to declare an act of Congress unconstitutional. President Jefferson was furious at “the crafty chief judge” for the way he maneuvered the argument.⁸² Specifically, Jefferson was angry at the order of the questions. He and many Republicans believed that, if part of the Judiciary Act of 1789 was unconstitutional, then why even address the issue of Marbury’s right to the commission? The answer, of course, is obvious. Marshall and the Court wanted to chastise the Executive Branch but also to preserve the independence of the judiciary.

Perhaps Marshall’s opinion was designed to offend no one. In many respects, though, it offended both Republicans and Federalists. The Republicans were looking for an excuse to remove him from the Court, but the decision denied them the opportunity to accuse Marshall of being overly political. After all, the Federalists wanted Marshall and the Court to embarrass Jefferson by ordering his secretary of state to give Marbury his commission, but this did not happen.

Marshall saw that such an order was likely to be ignored. The resulting decision and legal reasoning behind it allowed him to wade into a set of politicized circumstances and somewhat depoliticize the situation. Ironically, it was Marshall's political reasoning that allowed him to sidestep the rather complex political situation. In the ruling, Marshall certainly advanced his political desires. He did so under cover of the rights and powers of an independent and nonpolitical judiciary. In other words, he managed to avoid a constitutional crisis by claiming the Constitution as the basis for the Court's decision.

WHAT BECAME OF MARBURY?

Marbury never received his commission. Jefferson won the next presidential election in 1804. Secretary of State James Madison won the elections of 1808 and 1812. Another Virginian and Madison's secretary of state, James Monroe, won the elections of 1816 and 1820.

For all the attention Marbury received at the time, he ended up living out his life in virtual obscurity. In 1814, he was hired as the president of a bank in Georgetown. He died in 1835, without ever having received the commission the U.S. Supreme Court decided was rightfully his. His name will always be associated with the case that bears his name, a case that increased the power of the U.S. Supreme Court and created a system of checks and balances among the three branches of the federal government.



10

Judicial Review Since *Marbury*

The Republicans reacted quickly to the *Marbury* decision. Some decried it as proof that the Federalist influence in the courts was a serious problem. Others sought to remove this threat. The Republicans soon began impeachment proceedings in an attempt to remove two Federalists from the bench. The first was John Pickering, a judge who apparently suffered from mental illness. The second was Samuel Chase, an associate justice of the Supreme Court. Chase was openly involved in Federalist activities, and the Republicans decided to do something about it. If one looks at the Republican approach to the federal court system from 1801 to 1804, their strategy becomes

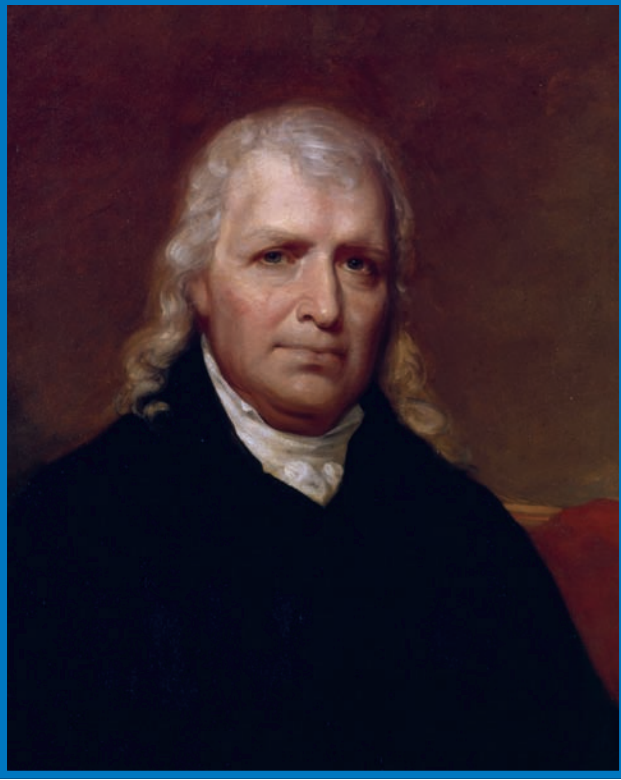
clear. The Republicans wanted to do more than merely reduce the power of the Supreme Court: They desired to limit the power and consistency of the entire Judicial Branch, restoring the power to determine law and truth to the state courts.

Pickering's trial resulted in his removal from office. The case against him was apparent and easily made. The aging judge simply could not perform his duties anymore. His sometimes erratic behavior allowed the Senate to remove him for violating the "good behavior" clause of the Constitution. After successfully removing Pickering, the Republicans turned their attention to Chase.

The case against Chase was less clear. Chase was an able judge whose most impeachable quality was probably poor judgment. The associate justice was openly political, both on and off the bench. This blatant partisanship made him an easy target for Republicans still smarting over the *Marbury* decision. Many believed that Chase's impeachment trial was simply laying the foundation for more judicial impeachments. There was even talk of impeaching Chief Justice Marshall—but all plans of turning out the Federalists in the judiciary rested on the removal of Samuel Chase. In his defense, Chase raised the issue of judicial independence. In the end, his passionate arguments convinced enough Republican senators that a Congress-controlled judiciary was more dangerous than an independent one.

When the Senate voted, Chase was acquitted of all charges, keeping him on the Court. One historian described the acquittal as the end of a process in which judicial independence was established:

For the first time since his appointment, John Marshall was secure as head of the Supreme Bench. For the first time since Jefferson's election, the National Judiciary was, for a period, rendered independent. For the first time in five years, the Federalist members of the Nation's highest tribunal could go about their duties without the fear that upon



Charged with political bias, Federalist Samuel Chase (1741–1811) was later acquitted. He is the only Supreme Court justice in U.S. history to be impeached.

them would fall the avenging blade of impeachment which had for half a decade hung over them. One of the great crises in American history had passed.⁸³

The judiciary had survived an open assault on its recently asserted powers. Judicial independence endured its first great test.

The *Marbury* decision both helped and hurt the Court. In claiming the power of judicial review, the high court essentially put itself within the political arena, drawing fire from the Republican-controlled Senate. That placed the Court in a position that threatened its independence. The threat was short-lived, but it was indeed a real threat. Had the Senate removed Chase, the entire judiciary would have likely been at the mercy of Congress. Ironically, it is judicial independence that enables the judiciary to effectively assert its power of judicial review.

JUDICIAL REVIEW AS A LEGAL DOCTRINE

The *Marbury* decision relied on the Court's authority of judicial review. This raises several concerns because the U.S. Constitution does not specifically give this power to the Supreme Court, yet the Court claimed it in this decision. Some historians seem to think that Marshall and the other justices simply invented this concept to make the best of a bad situation. John Marshall and the Supreme Court did not create judicial review, however; instead, the concept that the judiciary could overrule legislative acts and executive actions was rooted in the American spirit from the colonial experience. The English Privy Council had assumed this power, nullifying the actions of local governments. After the Revolution, the state supreme courts asserted the power of judicial review, even in the absence of state constitutional authority. During the fight to ratify the constitution, supporters and opponents alike agreed that the new federal judiciary would be able to exercise the power of judicial review.

One of the ongoing criticisms of the *Marbury* decision lies in the fact that the U.S. Constitution does not specifically state that the Supreme Court has the power of judicial review. How could the Court assume and exercise that power? The answer lies in a variety of places, all of which include discussions and practices that occurred before the Constitution was ratified. One source is *The Federalist Papers*, the series of essays written by Alexander Hamilton, James Madison, and John Jay in support of the new constitution after it was drafted in 1787. Hamilton wrote in Number 78 that "no legislative act" "contrary to the Constitution, can be valid."⁸⁴

Hamilton also argued that the "complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like."⁸⁵ Hamilton believed that such restrictions on the power of government could "be preserved in



Founder of the Federalist party, Alexander Hamilton (1755–1804) wrote in defense of the Constitution, “You must first enable government to control the governed; and in the next place oblige it to control itself.”

practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void.”⁸⁶ He went on to write that, if a constitutional system lacked this court protection of

individual rights, “all the reservations of particular rights or privileges would amount to nothing.”⁸⁷

To Hamilton, judicial independence was vital. He believed that “there is no liberty, if the power of judging be not separated from the legislative and executive powers.”⁸⁸ If the Judicial Branch was somehow submissive to the other two branches, then judicial independence would be sacrificed. Without judicial independence, the other two branches would inevitably trample on individual rights or deny individual liberties.

A written constitution must be followed because it represents “a fundamental law.”⁸⁹ Consequently, the judiciary must “ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body.” If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.”⁹⁰

This does not mean that the Judicial Branch is superior to the other two branches

It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.⁹¹

Thus, the Constitution, as the expression of fundamental law of the people, is supreme. The role of the judiciary, if a law is in conflict with the Constitution, is to ensure that the Constitution overrides such a law.

It is important to note that, during the state debates to ratify the U.S. Constitution, many participants seemed to believe that the new Supreme Court would have the power of judicial review.

The debates over the federal courts centered on the national judiciary's power of judicial review and its independence. Hamilton, of course, addressed these issues in his essay.

After Jefferson won the presidency, Republican actions indicate that they, too, believed in the power of judicial review. After the Republicans gained control of the House and Senate, they repealed the Judiciary Act of 1801. To ensure that the Supreme Court did not find the Repeal Act unconstitutional, Congress then changed the Court's schedule, removing the 1802 term altogether. This prevented the Court from ruling on the constitutionality of the Repeal Act until the effects of the act were virtually irreversible. Such political maneuvering indicates that the Republicans recognized the Court's power of judicial review, even though no judicial decision had yet exercised that power.

THE IMPORTANCE OF *MARBURY V. MADISON*

The importance of the landmark case is hard to overstate. "In its conventional interpretation, *Marbury v. Madison* did indeed come to be looked upon as a great landmark in American constitutional law."⁹² Because of its significance and its early date within the American republic, however, "its significance goes much further."⁹³ Historian George L. Haskins believes *Marbury v. Madison* to be to America as the Magna Carta is to Great Britain. Given the extent to which the *Marbury* decision has since shaped American constitutional law, the comparison is proper. After all, judicial review is a "basic tenet of constitutionalism."⁹⁴

Marbury underscored a simple yet important truth regarding constitutional government—namely, that "judicial review rests upon the following propositions and can rest upon no others: 1—That the constitution binds the organs of government; 2—That it is the law in sense of being known to and enforceable by the courts; 3—That the function of interpreting the standing



The building that houses the Supreme Court today was completed in 1935. It contains the courtroom, judges' chambers, a law library, meeting rooms, stores, a cafeteria, and a gymnasium.

law appertains to the courts alone.”⁹⁵ Judicial review elevates or recognizes the importance of the Constitution. Thus, the *Marbury* decision strengthened constitutional government because it asserted the Court’s power of judicial review. The very act of claiming judicial review demonstrates reliance on the written constitution. In American history, “No judicial opinion is a richer source of constitutional doctrine than *Marbury*.”⁹⁶ The case stands alone in advancing the importance of the Constitution and the Supreme Court.

JUDICIAL REVIEW AND THE SUPREME COURT

What did the decision mean to the development of the Court? In the short term, the case seemed to mean little in terms of the Court’s power. The Supreme Court did not again assert

its power of judicial review over a congressional act until the *Dred Scott* case in 1857. Since the *Dred Scott* decision, however, there have been many times in which the Court has invalidated legislative acts. In fact, since World War II, various courts in many different countries have asserted the same power of judicial review by voiding legislative acts. Thus, judicial review is one of the most visible characteristics of modern constitutional government. Because *Marbury v. Madison* is the first case in which the Court exercised the power of judicial review, it is an influential case. The case indeed casts a long shadow. The Court became powerful and been increasingly willing to exercise that power.

In the *Marbury* decision, Marshall did not cite a “single precedent nor any other source” in order to support the Court’s conclusion regarding judicial review.⁹⁷ Historian Paul W. Kahn said that this lack of precedent “is not because *Marbury* is an early opinion.”⁹⁸ Indeed, the Court could have cited many precedents, from America’s own colonial experience. Instead, the Court simply looked at the case through the lens of the Constitution. In other words, the Court did not believe it was necessary to cite precedents, because the justices believed that the Constitution was plain in this matter: Congress did not have the constitutional authority to grant or limit the powers of the Supreme Court.

In a sense, the Court’s *Marbury* decision effectively moved power from the Constitution to the Court. That is, the Constitution is what the Supreme Court says it is. This is entirely consistent with many of the Founding Fathers’ arguments made during the Constitutional Convention and the ratification fight.

JUDICIAL REVIEW TODAY

In some respects, the decision goes beyond the details of the case and even beyond the very real importance of establishing the power of judicial review for the Supreme Court. The decision also lays down the fundamental principle that no one, not even a branch of government, is above the law. This case

helped establish the legal precedent that the supreme law in the United States is the Constitution. Today, most Americans believe that the Supreme Court has the final say on constitutional matters. Most believe that the Court has the power of judicial review. To be sure, “*Marbury v. Madison* will long remain a foundational case for understanding the work” of the U.S. Supreme Court.⁹⁹

Indeed, the influence of *Marbury* extends well beyond the Supreme Court. The power of judicial review, although ultimately held by the high court, is also claimed throughout the entire court system. The role of judges in declaring legislative acts unconstitutional is “an official function” of the judiciary.¹⁰⁰ Judicial review encourages constitutional government and judicial independence. Of course, such conditions increase the democratization of the world. Moreover, as democracy becomes more common, the presence of written constitutions and an independent judiciary becomes increasingly more significant.

Today, Supreme Court rulings often affect Americans’ lives, especially when those rulings rest on the power of judicial review. With a single ruling, the Court can overturn acts of Congress, presidential actions, and state laws. The Court can also declare unconstitutional laws passed by city governments, police departments’ policies of law enforcement, and hiring practices of any government agency at any level. Ordinary citizens accept these decisions as a necessary part of the American system of government; however, no Supreme Court decision would hold any meaning without Marshall and the Court asserting the power of judicial review. What began as a dispute over the right to hold a job ended up increasing the power of the Supreme Court. That dispute led to the case that elevated the U.S. Supreme Court, promoted the Constitution, and preserved an independent judiciary. *Marbury v. Madison*: the landmark case in which the Court claimed and exercised the power of judicial review in constitutional matters.

Chronology

- September 1787** Congress passes the Judiciary Act of 1789.
- 1797** John Marshall gains national fame for his role in the XYZ Affair.
- March 4, 1797** John Adams is the second man sworn in as president of the United States.
- June 1800** John Marshall is appointed secretary of state.
- November 1800** Thomas Jefferson wins the presidential election of 1800.

Timeline

1787

Congress passes the Judiciary Act of 1789.

1801

James Madison is appointed secretary of state; the State Department does not deliver Marbury's commission.

1787

1801

1801

William Marbury is appointed justice of the peace for Washington, D.C.

- February 1801** The lame-duck Federalist Congress passes the Judiciary Act of 1801.
- January 20, 1801** John Marshall is appointed chief justice of the Supreme Court.
- March 3, 1801** William Marbury is appointed chief justice.
- March 4, 1801** Thomas Jefferson is sworn in as president of the United States.
- March 1801** James Madison is appointed secretary of state; the State Department does not deliver Marbury's commission.
- 1801** William Marbury files a lawsuit.
- 1802** The Republican-controlled Congress passes the Repeal Act, eliminating the new courts and judgeships created in the 1801 Judiciary Act.

1801

William Marbury files a lawsuit.

1801

1803

1803

Marshall and the Supreme Court declare part of the Judiciary Act of 1787 unconstitutional in asserting the Court's power of judicial review in *Marbury v. Madison*.

- 1802** Congress changes the Supreme Court session schedule, pushing *Marbury's* case to February 1803.
- 1803** Marshall and the Supreme Court declare part of the Judiciary Act of 1789 unconstitutional in asserting the Court's power of judicial review in *Marbury v. Madison*.
- 1857** For the first time since *Marbury*, the Supreme Court asserts the power of judicial review over an act of Congress in the *Dred Scott* decision.

Notes

Chapter 1

1. George Lee Haskins, *Foundations of Power: John Marshall, 1801–15*. New York: Macmillan Publishing Co., Inc., 1981, p. 82.
2. Ibid.
3. Ibid.
4. *The Federalist*, No. 78.
5. Robert L. Maddex, *The U.S. Constitution A to Z*. Washington, DC: CQ Press (a division of Congressional Quarterly), 2002, p. 280.

Chapter 2

6. Saul K. Padover, *Jefferson*. Old Saybrook, CT: Konecky & Konecky, 1942, p. 291.

Chapter 3

7. Francis N. Stites, *John Marshall: Defender of the Constitution*. Boston: Little, Brown and Company, 1981, p. 11.
8. Ibid.
9. William E. Nelson, *Marbury v. Madison: The Origins and Legacy of Judicial Review*. Lawrence: The University of Kansas Press, 2000, p. 41.
10. Ibid., p. 42.
11. Stites, *John Marshall*, p. 29.

12. Edward S. Corwin, *John Marshall and the Constitution: A Chronicle of the Supreme Court*. Toronto: Glasgow, Brook & Co., 1919, p. 71.
13. Stites, *John Marshall*, p. 35.
14. Ibid., p. 79.
15. Haskins, *Foundations of Power*, p. 103.
16. Corwin, *John Marshall and the Constitution*, pp. 23–24.
17. David McCullough, *John Adams*. New York: Simon & Schuster, 2001, p. 560.
18. Ibid.
19. Ibid.
20. Stites, *John Marshall*, p. 79.
21. Ibid.
22. Corwin, *John Marshall and the Constitution*, p. 51.
23. Ibid.
24. Ibid., p. 52.

Chapter 5

25. <http://www.history.org/Almanack/life/politics/sumview.cfm>
26. Corinne J. Naden and Rose Blue, *Marbury v. Madison: The Court's Foundation*. New York: Benchmark Books, 2005, p. 28.
27. Ibid.

Chapter 6

28. Haskins, *Foundations of Power*, p. 105.
29. Stites, *John Marshall*, p. 115.
30. Ibid., p. 118.
31. Nelson, *Marbury v. Madison*, p. 53.
32. Ibid.
33. Ibid.
34. Haskins, *Foundations of Power*, p. 101.
35. Ibid.
36. Nelson, *Marbury v. Madison*, p. 51.
37. Haskins, *Foundations of Power*, p. 91.
38. Naden and Blue, *Marbury v. Madison*, p. 47.
39. Haskins, *Foundations of Power*, p. 97.
40. Ibid.
41. Stites, *John Marshall*, p. 96.
42. Haskins, *Foundations of Power*, p. 86.
43. Ibid.
44. Naden and Blue, *Marbury v. Madison*, p. 47.
45. Haskins, *Foundations of Power*, p. 86.
46. Quoted in Haskins, *Foundations of Power*, p. 88.
47. Haskins, *Foundations of Power*, p. 91.
48. Ibid., p. 92.
49. Ibid., p. 91.
50. Ibid.
51. Ibid., p. 92.
52. Ibid., p. 95.
53. Ibid., p. 96.

54. Ibid.

55. Haskins, *Foundations of Power*, p. 85.

Chapter 7

56. Nelson, *Marbury v. Madison*, p. 55.
57. Ibid.
58. Ibid.
59. Corwin, *John Marshall and the Constitution*, p. 16.
60. Ibid., p. 23.
61. Haskins, *Foundations of Power*, p. 166.
62. Ibid.
63. Ibid., p. 168.

Chapter 8

64. Sir William Blackstone, *Commentaries on the Laws of England*, Vol. 3. Chicago: Chicago University Press, 1979; facsimile of 1769 original, p. 110.
65. Haskins, *Foundations of Power*, p. 191.
66. Ibid.
67. Quoted in Naden and Blue, *Marbury v. Madison*, 71.
68. Haskins, *Foundations of Power*, p. 185.

Chapter 9

69. *Marbury v. Madison*, 5 U.S. 137 (1803).
70. Ibid.
71. Ibid.
72. Ibid.
73. Ibid.
74. Robert Lowry Clinton, *Marbury v. Madison and Judicial Review*. Lawrence: The

- University of Kansas Press,
1989, p. 86.
75. *Marbury v. Madison*, 5 U.S. 137 (1803).
 76. Ibid.
 77. Ibid.
 78. Ibid.
 79. Ibid.
 80. Ibid.
 81. Ibid.
 82. Padover, *Jefferson*, p. 325.
- Chapter 10**
83. Albert J. Beveridge, *The Life of John Marshall*, Vol. III., Boston: Houghton Mifflin, 1919, p. 220.
 84. *The Federalist*, No. 78.
 85. Ibid.
 86. Ibid.
 87. Ibid.
 88. Ibid.
 89. Ibid.
 90. Ibid.
 91. Ibid.
 92. Haskins, *Foundations of Power*, p. 201.
 93. Ibid.
 94. Maddex, *The U.S. Constitution A to Z*, p. 279.
 95. Edward S. Corwin, *The Doctrine of Judicial Review: Its Legal and Historical Basis and Other Essays*. Gloucester, MA: Peter Smith, 1963, p. 26.
 96. Paul W. Kahn, *The Reign of Law: Marbury v. Madison and the Construction of America*. New Haven, CT: Yale University Press, 1997, p. 225.
 97. Ibid., p. 223.
 98. Ibid., pp. 223-224.
 99. Nelson, *Marbury v. Madison*, p. 1.
 100. Corwin, *The Doctrine of Judicial Review*, p. 63.

Glossary

checks and balances A system in which branches of government balance each other so that one branch does not gain too much power.

chief justice The principal judge of the Supreme Court.

depoliticize To remove from the realm of politics.

Federalist A member of a major, early U.S. political party who favored a strong centralized national government.

impeachment To charge a public official with misconduct in office.

judicial review The power of a court to review the actions of another branch of government and to determine whether those actions are constitutional.

judiciary The branch of government invested with judicial power to interpret and apply the law; the court system; the body of judges.

partisan Devoted to a cause or party.

Bibliography

- Beveridge, Albert J. *The Life of John Marshall*. 4 vols. Boston: Houghton Mifflin, 1919.
- Blackstone. *Commentaries on the Laws of England*. 4 vols. Chicago: Chicago University Press, 1979; facsimile of 1769 original.
- Bleser, Thomas C. *Antecedents to Marbury v. Madison: State and U.S. Cases*. University of Nebraska, 1972.
- Clinton, Robert Lowry. *Marbury v. Madison and Judicial Review*. Lawrence: The University of Kansas Press, 1989.
- Corwin, Edward S. *The Doctrine of Judicial Review: Its Legal and Historical Basis and Other Essays*. Gloucester, MA: Peter Smith, 1963.
- Corwin, Edward S. *John Marshall and the Constitution: A Chronicle of the Supreme Court*. Toronto: Glasgow, Brook & Co., 1919.
- DeVillers, David. *Marbury v. Madison: Powers of the Supreme Court*. Springfield, NJ: Enslow Publishers, Inc., 1998.
- Haskins, George Lee. *Foundations of Power: John Marshall, 1801–15*. New York: Macmillan, 1981.
- Kahn, Paul W. *The Reign of Law: Marbury v. Madison and the Construction of America*. New Haven, CT: Yale University Press, 1997.
- Maddex, Robert L. *The U.S. Constitution A to Z*. Washington, DC: CQ Press (a division of Congressional Quarterly), 2002.
- McConnell, Michael W. “The Story of *Marbury v. Madison*: Making Defeat Look Like Victory,” in *Constitutional Law Stories*, edited by Michael C. Dorf. New York: Foundation Press, 2004.
- McCullough, David. *John Adams*. New York: Simon & Schuster, 2001.
- Naden, Corinne J., and Rose Blue. *Marbury v. Madison: The Court’s Foundation*. New York: Benchmark Books, 2005.
- Nelson, William E. *Marbury v. Madison: The Origins and Legacy of Judicial Review*. Lawrence: The University of Kansas Press, 2000.
- Padover, Saul K. *Jefferson*. Old Saybrook, CT: Konecky & Konecky, 1942.

Roche, John P. and Stanley B. Bernstein (editors). *John Marshall: Major Opinions and Other Writings*. Indianapolis, IN: Bobbs-Merrill, 1867.

Stites, Francis N. *John Marshall: Defender of the Constitution*. Boston: Little, Brown and Company, 1981.

Web sites

<http://www.history.org/Almanack/life/politics/sumview.cfm>

Further Reading

- Baker, Leonard. *John Marshall: A Life in Law*. New York: Macmillan, 1974.
- Barber, Sotirios A. *The Constitution of Judicial Power*. Baltimore: The Johns Hopkins University Press, 1993.
- Cahn, Edmond. *Supreme Court and Supreme Law*. New York: A Clarion Book, Simon and Schuster, 1954.
- Graber, Mark A., and Michael Perhac (editors). *Marbury versus Madison: Documents and Commentary*. Washington, DC: CQ Press (a division of Congressional Quarterly), 2002.
- Hall, Kermit L. (editor). *The Supreme Court In and Out of the Stream of Power*. New York: Garland Publishing, 2000.
- Loth, David. *Chief Justice Marshall and the Growth of the Republic*. New York: Greenwood, 1949.
- Malone, Dumas. *Jefferson the President: First Term 1801–1805*. Boston: Little, Brown and Company, 1970.
- Melone, Albert P., and George Mace. *Judicial Review and American Democracy*. Iowa State University Press, 1988.
- Newmyer, R. Kent. *John Marshall and the Heroic Age of the Supreme Court*. Baton Rouge: Louisiana State University Press, 2001.
- Simon, J.F. *What Kind of Nation: Thomas Jefferson, John Marshall, and the Epic Struggle to Create a United States*. New York: Simon & Schuster, 2002.

Picture Credits

- | | |
|--|--|
| 8: National Portrait Gallery,
Smithsonian Institution/Art Resource, NY | Miriam and Ira D. Wallach
Division of Art, Prints and
Photographs |
| 10: Library of Congress, Prints and
Photographs Division | 68: Library of Congress, Prints and
Photographs Division |
| 12: National Archive and Records
Administration | 74: © Corbis |
| 16: Réunion des Musées Nationaux /
Art Resource, NY | 78: Library of Congress, Prints and
Photographs Division |
| 17: Library of Congress, Prints and
Photographs Division | 80: Humanities and Social Sciences
Library / Photography Collection,
Miriam and Ira D. Wallach
Division of Art, Prints and
Photographs |
| 18: Library of Congress, Prints and
Photographs Division | 82: Library of Congress, Prints and
Photographs Division |
| 20: National Archive and Records
Administration | 84: Library of Congress, Prints and
Photographs Division |
| 26: National Archive and Records
Administration | 90: National Archive and Records
Administration |
| 31: Getty Images | 93: National Archive and Records
Administration |
| 36: The Granger Collection,
New York | 98: Library of Congress, Prints and
Photographs Division |
| 38: Humanities and Social Sciences
Library / Photography Collection,
Miriam and Ira D. Wallach
Division of Art, Prints and
Photographs | 101: Library of Congress, Prints and
Photographs Division |
| 41: Library of Congress, Prints and
Photographs Division | 105: Dupont Library, Stratford Hall
Plantation |
| 44: Réunion des Musées Nationaux /
Art Resource, NY | 107: Library of Congress, Prints and
Photographs Division |
| 49: Library of Congress, Prints and
Photographs Division | 111: Library of Congress, Prints and
Photographs Division |
| 52: National Archive and Records
Administration | 113: National Archive and Records
Administration |
| 55: The Granger Collection,
New York | 120: National Portrait Gallery, Smithso-
nian Institution / Art Resource, NY |
| 58: Library of Congress, Prints and
Photographs Division | 122: Library of Congress, Prints and
Photographs Division |
| 61: Library of Congress, Prints and
Photographs Division | 125: © Joseph Sohm; ChromoSohm
Inc./CORBIS |
| 65: Humanities and Social Sciences
Library / Photography Collection, | cover: The Maryland Historical Society |

Index

A

- Adams, John
 - birth, 48
 - death, 25
 - friendship with Jefferson, 24–25
 - law career, 48–50
 - politics, 50–53, 57, 59–60
 - presidency, 8, 23–24, 27–28, 40, 42–43, 45, 47–48, 51–54, 56, 63–65, 69, 74, 76, 79, 82, 84, 94, 97, 100–102
 - vice presidency, 24, 51, 63
 - views on government, 23–25, 27, 51–53
- Adams, John Quincy, 50
- Adams, Samuel
 - and the anti-federalists, 19
 - politics, 48–49
- Alien Acts
 - and Republican voting power, 23–24, 53, 62, 64, 69
- Anti-federalist Party
 - and the bill of rights, 21
 - members, 19, 42, 89
 - opposed to the Constitution, 18–19
- Arnold, Benedict, 33
- Articles of Confederation
 - weakness of, 17–19, 39, 67, 86–87

B

- balance of power
 - altering of, 7, 11
- Bill of Rights, 21, 68, 89
- Blackstone, William
 - Commentaries on the Laws of England*, 32
- Boston Massacre, 49
- Boston Tea Party, 50
- Brent, Daniel, 101

- Burr, Aaron
 - vice presidency, 27, 64

C

- Campbell, Archibald, 32
- Chase, Samuel
 - birth, 83
 - death, 84
 - impeachment trial, 108, 116–117, 119
 - law practice, 83
 - and the Supreme Court, 10, 71, 83–85, 108
 - temper, 83–85
- chronology and timeline, 126–129
- Commentaries on the Laws of England* (Blackstone), 32
- Concord, Battle of, 16, 33
- Constitution
 - amendments, 21
 - articles of, 17–19, 39, 50, 90, 112
 - authority, 11, 71–72, 124–125
 - individual rights and liberties, 110
 - laws governing, 11, 27, 34–35, 39, 64, 89, 95, 97, 104, 110, 112–115, 117, 122–123
 - original jurisdiction, 100
 - ratification, 17–19, 21–22, 39, 51, 68, 80, 90, 119, 122
 - supporters, 18–19, 21, 74, 119–121
 - violations, 113
 - writing of, 11, 13, 18, 39, 67, 77, 82
- Constitutional Convention
 - delegates, 74, 77, 81, 87–90
 - events of, 18, 24, 39, 50, 66
- Continental army
 - battles of, 32–33, 36
 - members of, 44, 50, 76, 79, 102

Continental Congress
 and the Declaration of
 Independence, 16, 24, 60, 83
 formation, 15, 50, 59, 67
 members, 75
 Cornwallis, Lord, 32
 Cushing, William
 birth, 81
 education and law, 81
 health, 42–43, 78, 82, 98
 and the Supreme Court, 9, 42–43,
 71, 78, 81–83, 98

D

Declaration of Independence
 ratification, 25
 signers of, 77, 83
 writing of, 16, 25, 50–51, 60
Dred Scott decision, 124

E

electoral college, 27, 51, 64
 Ellsworth, Oliver, 42, 75
 executive branch
 actions of, 11, 13–14, 24, 67,
 95, 99, 101, 103–105, 108, 110,
 113–114, 119
 cabinet, 21, 51–52, 61, 68

F

Fairfax, Lord, 31–32
 case, 39
 Fauquier, Francis, 59
Federalist Papers
 publication, 21
 purpose of, 21, 68, 74, 119–121
 writing of, 13, 19, 74, 119–120
 Federalist Party
 division of, 51–52
 finances of, 19
 lame-duck, 27, 54–55, 94
 members, 22–23, 27, 29, 38–39,
 42–43, 45, 48, 53–54, 57, 61–62,
 64–65, 78–79, 81, 85, 94–95, 108,
 114, 116
 protection of, 25
 support of the Constitution,
 18–19, 21–22, 69
 France
 government, 22–24, 40–41, 53, 99

relationship with the United
 States, 22, 40–41, 51–52, 61, 64,
 69, 84

Franklin, Benjamin
 and the development of federal
 government, 17, 24, 50, 59–60
 French and Indian War, 33
 French Revolution, 60

G

Gerry, Elbridge, 40–41
 Great Bridge, Battle of, 33
 Great Britain
 army, 32, 49–50, 60, 87
 colonies, 11, 15–16, 32, 49–50,
 59, 77
 creditors, 87
 foreign relations, 50–51, 64,
 82–83, 87
 government, 11, 15, 21, 23–24, 31,
 39–40, 48, 50–51, 123
 trade, 41
 Gridley, Jeremiah, 81

H

Hamilton, Alexander
 and the development of federal
 government, 17–18
 and the *Federalist Papers*, 13, 19,
 68, 120–121
 as secretary of the treasury, 19,
 21, 61
 views on government, 21–22,
 51–53, 61, 63–64, 79, 122
 Hancock, John
 and the anti-federalists, 19
 Harper, William
 lawsuit, 8–9, 46
 Haskins, George L, 123
 Henry, Patrick, 42, 66, 68
 and the anti-federalists, 19
 Hooe, Robert Townsend
 lawsuit, 46
 Hughes, Charles Evan, 93

J

Jay, John, 43, 50
 chief justice, 19, 42, 74–75, 82
 and the *Federalist Papers*, 19, 68,
 74, 120

- Jay's Treaty
 - purpose of, 40, 69, 74–75
 - Jefferson, Jane Randolph, 59
 - Jefferson, Martha Wayles Skelton, 59
 - death, 60
 - Jefferson, Peter, 59
 - Jefferson, Thomas, 21, 30
 - birth, 59, 62
 - death, 25
 - and the Declaration of Independence, 24, 50, 60
 - education, 33, 59, 62
 - friendship with Adams, 24–25
 - involvement in *Marbury v. Madison* case, 9, 57, 65, 69
 - law practice, 59
 - politics, 57, 59–63
 - presidency, 24, 27–29, 42–43, 45–46, 54–55, 58, 64–66, 69, 73, 94–95, 98, 101, 103, 106–110, 114–115, 122
 - and the Republican Party, 22–23, 25, 27–28, 53, 81, 95, 108
 - as secretary of state, 21–23, 51, 61–63
 - vice presidency, 23–25, 64
 - views on government, 22–24, 41, 58, 60–62, 69
 - judicial branch
 - appointments, 27–28
 - circuit court, 72–73, 83, 90–93, 97
 - common law, 32, 87
 - Court of Appeals, 86
 - district courts, 45
 - early, 86–97, 99–110
 - independence, 10–11, 13, 34–35, 39, 43, 45–46, 67, 84, 95, 106, 108, 114–115, 117–119, 121–122
 - local, 86
 - organization of, 56
 - state courts, 11, 13, 87, 89–90, 100
 - judicial review
 - influence of, 14, 34
 - as a legal doctrine, 119–122
 - since *Marbury*, 126
 - power of, 11, 39, 45, 47, 75, 96, 114, 119, 122–124, 126
 - principle of, 13
 - an the Supreme Court, 11, 13–14, 34–35, 39, 47, 75, 114, 119, 124–125
 - today, 125–126
 - Judiciary Act (1789)
 - results of, 56, 75, 77, 90, 100–101, 108, 112–113
 - unconstitutional, 114
 - Judiciary Act (1801)
 - opponents, 93–94
 - repeal of, 95–97, 122
 - results of, 27, 45, 56, 92–93
- K**
- Kahn, Paul W., 124
 - Keith, Mary Randolph, 30
 - Kentucky Resolution, 64
- L**
- Lee, Charles
 - and *Marbury v. Madison*, 100–101, 103–105
 - legislative branch
 - actions of, 11, 13–14, 46, 108, 119, 121, 124–126
 - House of Representatives, 11, 27, 43, 53, 60, 67–68, 71, 73, 75, 92, 122
 - laws of, 24, 68, 87, 89–91, 95, 103, 112–114
 - reforms, 92
 - Senate, 9, 11, 28, 42–43, 45, 51, 53–56, 67, 71, 73, 75–77, 84, 92, 94–95, 103, 109, 117, 119, 122
 - L'Enfant, Pierre, 102
 - Lexington, Battle of, 15, 33
 - Lincoln, Levi
 - attorney general, 100, 104–106
- M**
- Madison, Dolley Payne Todd, 69
 - Madison, James, 66
 - Madison, James, 32, 58, 65–69
 - birth, 66
 - commissions, 8–9, 65, 69, 97, 101, 104, 107, 109–110
 - and the development of federal government, 18
 - education, 66
 - father of the Constitution, 19, 67–69

- and the *Federalist Papers*, 19, 68, 120
 - politics, 57, 66–69
 - presidency, 19, 66, 115
 - as secretary of state, 8, 19, 46, 55–57, 65–66, 69, 97, 99–101, 103–104, 106–110, 114
 - views on government, 66–69
 - Madison, Nelly Conway, 66
 - Marbury, William, 47, 55, 115
 - commission, 8–9, 46, 56, 65, 69, 97, 100–101, 106–107, 109–110, 114–115
 - death, 115
 - justice of the peace position, 9, 47, 54, 56, 65, 97
 - lawsuit, 8–9, 46–47, 54, 56–57, 65, 69, 100–101, 103, 106–111, 113
 - Marshall Court (1803)
 - desire for unity, 74
 - early years of, 73–74
 - importance of, 10, 34, 63, 107
 - members of, 71–75, 85
 - Marshall, John
 - birth and childhood, 30–32, 62
 - chief justice, 8–11, 23, 28–29, 34–35, 37, 43–45, 47, 63, 71, 73–75, 79, 97–102, 105–110, 112–115, 117, 119, 126
 - education, 32–33, 37, 62
 - family life, 37
 - law practice, 37–40
 - military, 33–37
 - and politics, 39–40, 42–45, 58, 62, 68
 - reasoning and temperament, 29, 38, 43–45, 73–75
 - role in the XYZ affair, 23, 40–41
 - as secretary of state, 43, 45, 56, 79, 101
 - Marshall, Mary, 30
 - Marshall, Mary Willis Amber
 - death, 37
 - Marshall, Thomas, 30, 32–33
 - McCullough, David, 43
 - Monmouth, Battle of, 33
 - Monroe, James, 96
 - and the anti-federalists, 19
 - presidency, 115
 - Moore, Alfred
 - birth, 75
 - death, 77
 - education, 75
 - law and military, 76
 - and the Supreme Court, 71, 76–77, 98
- N**
- Nelson, William E., 35
- O**
- Otis, James, Jr., 48
- P**
- Paterson, William
 - birth, 77
 - death, 79
 - politics, 77
 - and the Supreme Court, 71, 78–79, 98
 - Philadelphia Convention, 18, 24, 59, 67
 - Pickering, John
 - impeachment, 108, 116–117
 - Pinckney, Charles Cotesworth, 40–41
 - Pinckney, Thomas, 51
 - Politics, *Marbury v. Madison*, 15–28
 - Pope, Alexander, 30
 - Presidential campaign of 1800
 - events of, 25, 27–28, 42, 48, 53, 55, 64–65, 79
 - Publius Valerius Publicola, 21
 - Putnam, James, 48
- Q**
- Quincy, John, 50
- R**
- Ramsay, Dennis
 - lawsuit, 8–9, 46
 - Repeal Act (1802)
 - results of, 95–97, 122
 - Republican Party
 - attacks on, 24, 81
 - control of Congress, 27–28, 106, 108, 117, 119, 122
 - formation of, 22–23
 - members of, 22–23, 25, 27–29, 35, 39, 42, 51, 53, 57, 62–63, 69, 84–85, 94–96, 114, 116–117, 122

Revolutionary War, 60, 79
 battles of, 15–16, 33
 effects of, 16, 37–38, 66–67, 76, 81, 87, 119
 heroes of, 21, 85
 Rush, Benjamin, 77
 Rutledge, John, 74–75

S

Sedition Act
 effects of, 23–24, 27, 53, 62, 64, 69, 84
 Shakespeare, William, 24, 30
 Stamp Act
 protests to, 48, 83
 Stockton, Richard, 77
 Stoddert, Benjamin, 54
 Story, Joseph, 84
Summary View of the Rights of British America, A (Jefferson), 59
 Supreme Court
 building, 9, 92–93
 development, 124
 first, 9–10, 88–93
 and judicial review, 11, 13–14, 34, 39, 47, 75, 114, 117, 119, 124–125
 justices, 7, 9–11, 19, 23, 28–29, 34–35, 37, 42–45, 47, 54, 63, 71–85, 90, 93–94, 97–102, 105–110, 112–115, 117–119
 lack of stature, 9–10
 mandates, 89
 nineteenth century, 72, 116
 and political divisions, 28–29, 106
 power of, 11, 13, 34–35, 39, 44, 46, 56, 65, 74–75, 93, 107, 111–115, 117, 119, 125
 sessions, 42, 84, 98–105, 107–114, 126

T

Taft, William Howard, 93
 Treaty of Paris
 effects of, 50, 74, 82, 87
 trial
 decision, 7–14, 29, 46, 81, 107–115, 117, 119, 125
 events of, 44–45, 54, 57, 86, 98–108
 importance of, 15, 29, 46, 65, 99, 114, 122–124

U

United States
 citizens, 11
 early political climate of, 15–19, 27–29, 34, 38, 74, 106, 108–110
 founders of, 7, 11, 13, 15, 17, 36, 51, 53, 66–68, 82, 125
 history, 15, 47, 74, 118, 124
 independence, 16–17, 19, 50, 59, 87, 102
 leaders, 7–8, 40, 62–63
 today, 13, 124, 126

V

Virginia Assembly, 37, 39, 60
 Virginia House of Burgesses, 30, 59, 80
 Virginia Resolutions (1798), 69

W

Wagner, Jacob, 101
 War of 1812, 92
 Washington, Bushrod
 death, 79
 education and law, 79–81
 military, 79
 and the Supreme Court, 10, 71, 79–81
 Washington, George, 71
 biography of, 81
 death, 42
 and the development of federal government, 17, 79, 82
 early years, 30–32
 military years, 33, 35–36, 44, 50
 presidency, 21–23, 40, 51, 54, 60–61, 63, 68, 74, 84–85, 100
 Washington D.C., 7, 54, 65
 in (1901), 73, 102
 Capitol building in, 9, 42, 62, 92
 Wilson, James, 79–80
 Witherspoon, John, 66
 World War II, 124
 Wythe, George, 33, 59

X

XYZ affair
 events of, 52, 64, 69
 Marshall's role in, 23, 40–41

About the Author

Shane Mountjoy is an associate professor of history at York College in York, Nebraska. He resides with his wife, Vivian, and their four home-schooled daughters. Dr. Mountjoy has taught history, geography, and political science courses at York College since 1990. He has written several history books. Professor Mountjoy holds an associate of arts degree from York College, a bachelor of arts degree from Lubbock Christian University, a master of arts from the University of Nebraska-Lincoln, and a doctor of philosophy from the University of Missouri-Columbia.

About the Editor

Tim McNeese is an associate professor of history at York College in York, Nebraska. A prolific author of books for elementary, middle school, high school, and college readers, McNeese has published more than 80 books and educational materials over the past 20 years on subjects such as Alexander Hamilton to the siege of Masada. His writing has earned him a citation in the library reference work, *Something about the Author*. In 2005, his textbook *Political Revolutions of the 18th, 19th, and 20th Centuries* was published. Professor McNeese served as a consulting historian for the History Channel program, “Risk Takers, History Makers.”